

EIGHTY-NINTH DAY

FRIDAY, MAY 30, 1997

PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by President Pro Tempore Zaffirini.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Moncrief, Nelson, Nixon, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

The President Pro Tempore announced that a quorum of the Senate was present.

The Honorable Joe Crabb of the House of Representatives offered the invocation as follows:

As the 75th Regular Legislative Session draws to a close, this scripture seems especially appropriate:

"With what shall I come before the Lord and bow down before the exalted God? Shall I come before him with burnt offerings, with calves a year old? Will the Lord be pleased with thousands of rams, with ten thousand rivers of oil? Shall I offer my firstborn for my transgression, the fruit of my body for the sin of my soul? He has showed you, O man, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God." (Micah 6:6-8)

I would also think that the prayer offered by Sir Jacob Astley before the battle of Edgehill on October 23, 1642, might be fitting.

"O Lord, Thou knowest how busy I must be this day. If I forget Thee, do not Thou forget me." Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 987

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 29, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 987** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF

BIVINS

TRUAN

ZAFFIRINI

On the part of the Senate

GALLEGO

MOWERY

PRICE

WEST

On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to alternative uses for money in the compensation to victims of crime fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 56.54, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) In addition to the purposes provided by Subsection (b), the legislature may appropriate money in the compensation to victims of crime fund to state agencies that deliver or fund victim-related services or assistance. This subsection expires August 31, 1999.

SECTION 2. Article 56.54(b), Code of Criminal Procedure, is amended to read as follows:

(b) Except as provided by Article 56.541, the ~~[The]~~ compensation to victims of crime fund may be used only by the attorney general ~~[only]~~ for the payment of compensation to claimants or victims under this subchapter and other expenses in administering this subchapter.

SECTION 3. Subchapter B, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.541 to read as follows:

Art. 56.541. APPROPRIATION OF EXCESS MONEY FOR OTHER CRIME VICTIM ASSISTANCE. (a) Not later than December 15 of each even-numbered year, the attorney general, after consulting with the comptroller, shall prepare forecasts and certify estimates of:

(1) the amount of money that the attorney general anticipates will be received from deposits made to the credit of the compensation to victims of crime fund during the next state fiscal biennium, other than deposits of:

(A) gifts, grants, and donations; and

(B) money received from the United States;

(2) the amount of money from the fund that the attorney general anticipates will be obligated during the next state fiscal biennium to comply with this chapter; and

(3) the amount of money in the fund that the attorney general anticipates will remain unexpended at the end of the current state fiscal year and that is available for appropriation in the next state fiscal biennium.

(b) At the time the attorney general certifies the estimates made under Subsection (a), the attorney general shall also certify for the next state fiscal biennium the amount of excess money in the compensation to victims of crime fund for purposes of Subsection (c), calculated by multiplying the amount estimated under Subsection (a)(2) by 120 percent, and subtracting that product from the sum of the amounts estimated under Subsections (a)(1) and (a)(3).

(c) For a state fiscal biennium, the legislature may appropriate from the compensation to victims of crime fund the amount of excess money in the fund certified for the biennium under Subsection (b) to state agencies that deliver or fund victim-related services or assistance.

(d) The attorney general and the comptroller shall cooperate in determining the proper allocation of the various sources of revenue deposited to the credit of the compensation to victims of crime fund for purposes of this article.

(e) The attorney general may use money appropriated from the compensation to victims of crime fund for grants or contracts supporting victim-related services or assistance. A grant supporting victim-related services or assistance is governed by Chapter 783, Government Code.

(f) The attorney general shall adopt rules necessary to carry out this article.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Sections 2 and 3 of this Act take effect September 1, 1997. The attorney general shall make the first estimates required by Article 56.541, Code of Criminal Procedure, as added by this Act, for the state fiscal biennium beginning September 1, 1999, and the legislature may not appropriate excess money in the compensation to victims of crime fund as provided by Article 56.541, Code of Criminal Procedure, as added by this Act, for a biennium before the state fiscal biennium beginning September 1, 1999.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 534**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 29, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 534** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HARRIS
ELLIS
DUNCAN
MADLA
CAIN

On the part of the Senate

MAXEY
CHRISTIAN
HILDERBRAN
McREYNOLDS
NAISHTAT

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the collection of claims for recovery of money under subrogation and third-party reimbursement rights arising from medical payments by health and human services agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0391 to read as follows:

Sec. 531.0391. SUBROGATION AND THIRD-PARTY REIMBURSEMENT COLLECTION CONTRACT. (a) The commission shall enter into a contract under which the contractor is authorized on behalf of the commission or a health and human services agency to recover money under a subrogation or third-party reimbursement right held by the commission or a health and human services agency arising from payment of medical expenses. The contract must provide that:

(1) the commission or agency, as appropriate, shall compensate the contractor based on a percentage of the amount of money recovered by the contractor for the commission or agency; and

(2) with the approval of the attorney required by other law to represent the commission or agency in court, the contractor may represent the commission or agency in a court proceeding to recover money under

a subrogation or third-party reimbursement right if the representation is cost-effective and specifically authorized by the commission.

(b) The commission shall develop a process for identifying claims for the recovery of money under a subrogation or third-party reimbursement right described by this section and referring the claims to the contractor. A health and human services agency shall cooperate with the contractor on a claim of the agency referred to the contractor for collection.

(c) The commission is not required to enter into a contract under Subsection (a) if the commission cannot identify a contractor who is willing to contract with the commission on reasonable terms. If the commission cannot identify such a contractor, the commission shall develop and implement alternative policies to ensure the collection of money under a subrogation or third-party reimbursement right.

(d) The commission may allow a state agency other than a health and human services agency to be a party to the contract required under Subsection (a). In that case, the commission shall modify the contract as necessary to reflect the services to be provided by the contractor to the additional state agency.

SECTION 2. Not later than February 1, 1998, the Health and Human Services Commission shall enter into an initial contract or implement the alternative policies as required by Section 531.0391, Government Code, as added by this Act.

SECTION 3. Not later than September 1, 1998, the Health and Human Services Commission shall prepare and deliver to the governor, lieutenant governor, speaker of the house of representatives, and clerks of the standing committees of the senate and house of representatives with primary jurisdiction over human services a report concerning:

(1) the commission's progress in improving collection of money under subrogation and third-party reimbursement rights relating to medical expenses paid by the commission and health and human services agencies;

(2) the adequacy of existing lien and subrogation statutes;

(3) any feature of a contract or a claims processing procedure of the commission or a health and human services agency that limits the ability of the commission or agency to collect money under a subrogation or third-party reimbursement right described by Subdivision (1) of this section; and

(4) any other matter affecting the ability of the commission or a health and human services agency to collect money under a subrogation or third-party reimbursement right described by Subdivision (1) of this section.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 381**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 29, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 381** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SHAPIRO
WHITMIRE
DUNCAN
NELSON
HARRIS

GOODMAN
HIGHTOWER
PLACE
FARRAR

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the civil and criminal consequences of a grant of deferred adjudication for a sexual offense or a sexually assaultive offense and to the prosecution of certain defendants charged with or convicted of those offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a), (c), and (d), Section 5, Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. A judge may place on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a defendant charged with a felony described by Section 13B(b) of this article, only if the judge makes a finding in open court that placing the defendant on community supervision is in the best interest of the victim. The failure of the judge to find that deferred adjudication is in the best interest of the victim is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence. After placing the defendant on community supervision under this section, the judge shall

inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. The failure of a judge to inform a defendant of possible consequences under Subsection (b) of this section is not a ground for reversal unless the defendant shows that he was harmed by the failure of the judge to provide the information. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Section 13B(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. The provisions of Section 15 of this article specifying whether a defendant convicted of a state jail felony is to be confined in a county jail or state jail felony facility and establishing the minimum and maximum terms of confinement as a condition of community supervision apply in the same manner to a defendant placed on community supervision after pleading guilty or nolo contendere to a state jail felony. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

(c) On expiration of a community supervision period imposed under Subsection (a) of this section, if the judge has not proceeded to adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge him. The judge may dismiss the proceedings and discharge a defendant, other than a defendant charged with an offense described by Section 13B(b) of this article, prior to the expiration of the term of community supervision if in the judge's opinion the best interest of society and the defendant will be served. The judge may dismiss the proceedings and discharge a defendant charged with a felony described by Section 13B(b) of this article only if in the judge's opinion the best interest of society and the defendant will be served and the defendant has successfully completed at least two-thirds of the period of community supervision. Except as provided by Section 12.42(g), Penal Code, a [★] dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense. For any defendant who receives a dismissal and discharge under this section[, except that]:

(1) upon conviction of a subsequent offense, the fact that the defendant had previously received community supervision with a deferred adjudication of guilt shall be admissible before the court or jury to be considered on the issue of penalty;

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received community supervision with a deferred adjudication of guilt under this section in issuing, renewing, denying, or revoking a license under that chapter; and

(3) if the defendant is a person who has applied for registration to provide mental health or medical services for the rehabilitation of sex offenders, the Interagency Council on Sex Offender Treatment may consider the fact that the defendant has received community supervision under this section in issuing, renewing, denying, or revoking a license or registration issued by that council.

(d) In all other cases the judge may grant deferred adjudication unless:

(1) the defendant is charged with an offense:

(A) ~~[(1)]~~ under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or

(B) ~~[(2)]~~ for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; or

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Section 13B(b) of this article; and

(B) has previously been placed on community supervision for any offense under Paragraph (A) of this subdivision.

SECTION 2. Subsection (b), Section 3.03, Penal Code, is amended to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense;

(A) under Section 49.08; or

(B) ~~[(2) an offense]~~ for which a plea agreement was reached in a case in which the accused was charged with more than one offense under Section 49.08; or

(2) an offense:

(A) under Section 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

SECTION 3. Section 3.04, Penal Code, is amended by adding Subsection (c) to read as follows:

(c) The right to severance under this section does not apply to a prosecution for offenses described by Section 3.03(b)(2) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order other relief as justice requires.

SECTION 4. Section 12.42, Penal Code, is amended by adding Subsection (g) to read as follows:

(g) For the purposes of Subsection (d)(2):

(1) a defendant has been previously convicted of an offense listed under Subsection (d)(2)(B) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (d)(2)(B) is a conviction of an offense listed under Subsection (d)(2)(B).

SECTION 5. Subsection (e), Section 3, Article 6252-13c.1, Revised Statutes, is amended to read as follows:

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d) of this section, the local law enforcement authority shall verify the age of the victim and the basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct ~~[or a deferred adjudication]~~ and is not a conviction ~~or a deferred adjudication~~ for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

SECTION 6. Subsection (f), Section 4, Article 6252-13c.1, Revised Statutes, is amended to read as follows:

(f) If the person moves to another municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a) of this section. Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) of this section or under this subsection, the authority shall verify the age of the victim and the

basis on which the person is subject to registration under this article. If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct ~~[or a deferred adjudication]~~ and is not a conviction ~~or a deferred adjudication~~ for an offense under Section 25.02, Penal Code, the authority shall immediately publish notice in English and Spanish in at least one newspaper of general circulation in the county in which the person subject to registration intends to reside. The local law enforcement authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. If the victim is a child younger than 17 years of age, regardless of the basis on which the person is subject to registration, the authority shall immediately provide notice to the superintendent of public schools of the school district in which the person subject to registration intends to reside by mail to the district office.

SECTION 7. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 1997.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1907

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 29, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1907** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BIVINS

SIBLEY

LUNA

BARRIENTOS

On the part of the Senate

SWINFORD

SOLIS

RANGEL

E. REYNA

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to tuition and fees charged by public institutions of higher education, including the redesignation of certain fees as tuition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TUITION AND FEES

SECTION 1.01. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0513 to read as follows:

Sec. 54.0513. REDESIGNATION OF BUILDING USE FEE. (a) The building use fee previously authorized in Section 55.16 of this code is redesignated as tuition.

(b) In addition to amounts that a governing board of an institution of higher education is authorized to charge as tuition under this chapter, the governing board is authorized to charge as tuition the following maximum amounts:

(1) \$34 per semester credit hour for the 1997-1998 academic year;

(2) \$36 per semester credit hour for the 1998-1999 academic year;

(3) \$38 per semester credit hour for the 1999-2000 academic year; and

(4) \$40 per semester credit hour for the 2000-2001 academic year and each academic year thereafter.

(c) Amounts collected by an institution of higher education under this section are institutional funds as defined by Section 51.009 of this code and shall be accounted for as designated funds. These funds shall not be accounted for in a general appropriations act in such a way as to reduce the general revenue appropriation to a particular institution.

(d) A governing board may waive all or part of the tuition charged to a student under this section if it finds that the payment of such tuition would cause an undue economic hardship on the student.

(e) Section 56.033 of this code requiring certain percentage amounts of tuition to be set aside for grants and scholarships does not apply to tuition collected under this section.

(f) A governing board of an institution of higher education may continue to charge as tuition under this section the amount that it charged as the building use fee at that institution in the 1996-1997 academic year without holding a public hearing, but may not increase tuition under this section above that amount without holding a public hearing.

SECTION 1.02. Subsection (i), Section 54.051, Education Code, is amended to read as follows:

(i) Tuition for a resident student registered at a law school is \$80 [~~\$75~~] per semester credit hour. Tuition for a nonresident student registered at a law school is the amount that can be charged a nonresident graduate student under Subsection (d) and Section 54.008 [~~\$200 per semester credit hour~~].

SECTION 1.03. Subchapter D, Chapter 54, Education Code, is amended by adding Section 54.214 to read as follows:

Sec. 54.214. DISTANCE LEARNING OR OFF-CAMPUS COURSES. The governing board of an institution of higher education may waive a fee it is authorized to charge if the board determines that:

(1) a student is enrolled only in distance learning courses or other off-campus courses of the institution;

(2) the student cannot reasonably be expected to use the activities, services, or facilities on which the fee is based; and

(3) the waiver of the fee will not materially impair the ability of the institution either to service any debt on which the fee is based or to offer or operate the particular activity, service, or facility supported by the fee.

SECTION 1.04. Section 55.01, Education Code, is amended by amending Subdivision (3) and adding Subdivision (4) to read as follows:

(3) "Revenue funds" means the revenues, incomes, receipts, rentals, rates, charges, fees, grants, and tuition levied or collected from any public or private source by an institution of higher education, including interest or other income from those funds.

(4) "Bonds" means bonds, notes, or credit agreements a board is authorized to enter into either by this title or by other laws.

SECTION 1.05. Section 55.16, Education Code, is amended to read as follows:

Sec. 55.16. BOARD RESPONSIBILITY [RENTALS, RATES, CHARGES, AND FEES]. (a) Each board shall be authorized to fix and collect rentals, rates, and charges [~~and fees~~] from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board. If [~~provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed the amount permitted by Subsection (b), except that those schools charging more than \$6 per semester hour as of May 1, 1975, shall not exceed the amount being charged as of that date. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter, and provided that hereafter if~~] bonds have been or are issued pursuant to [~~Section 55.17 of~~] this title [code], or secured or to be secured by a pledge of part or all of the board's revenue funds [~~a limited or unlimited use fee~~], and if, at the time of authorizing the issuance of the bonds,

(1) the estimated maximum amount per semester hour of such pledged revenue funds ~~[use fee]~~ (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the principal of and interest on the bonds when due, together with (2) the aggregate amount of all such pledged revenue funds ~~[use fees]~~ which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed the amount permitted by this title ~~[Subsection (b)]~~, then any necessary fees, tuition, rentals, rates, or other charges constituting revenue funds ~~[such limited or unlimited use fee]~~ shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide revenue funds sufficient for the payment of the principal of and interest on the bonds, regardless of any other provision or limitation provided by this title ~~[of this section or the limitations contained herein]~~.

(b) ~~[A board may not charge rentals, rates, charges, and fees under this section in a total amount per semester credit hour that exceeds the tuition rate per semester credit hour for a resident student at a general academic teaching institution under Subchapter B, Chapter 54, for the academic year in which the rentals, rates, charges, and fees are charged.]~~ A board is not required to charge students enrolled in different degree programs at the institution the same rentals, rates, charges, and fees under this section.

~~[(c) A board that charges a rental, rate, charge, or fee under this section may use the revenue for any purpose at the institution at which the revenue is collected, subject to the laws governing the institution and the board. This subsection does not decrease the authority of a board of regents to enter into pledges or covenants with respect to bonds, notes, or other obligations under law existing before the effective date of this subsection.]~~

~~[(d) Before a board increases a rental, rate, charge, or fee collected under this section at an institution under the direction, management, and control of the board, the board or, if the board directs, the chief executive officer of the institution must hold a public hearing at the institution on the increase.]~~

SECTION 1.06. Subsection (d), Section 55.17, Education Code, is repealed.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Subsection (a), Section 55.13, Education Code, is amended to read as follows:

(a) For the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and/or equip any property, buildings, structures, activities, services, operations, or other facilities, for and on behalf of its institution or institutions, or any branch or branches thereof, each board may issue its revenue bonds from time to time and in one or more issue or series, to be payable from and secured by liens on and pledges of all or any part of any of the revenue funds ~~[revenues, income, or receipts]~~ of the board and its institution or institutions, or any branch or branches of any of its institutions ~~[thereof, including, without limitation, any rentals, rates, charges, fees, or other resources, in the manner provided by this subchapter]~~.

SECTION 2.02. Subsections (a), (b), and (c), Section 55.17, Education Code, are amended to read as follows:

(a) Each board may pledge all or any part of its revenue funds [~~revenues, income, or receipts from such rentals, rates, charges, and/or fees, or other resources~~] to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged revenue funds [~~rentals, rates, charges, and/or fees~~] shall be fixed and collected in amounts that will be at least sufficient[~~, together with any other pledged resources;~~] to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and, to the extent required by the resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds and for the payment of operation, maintenance, and other expenses in connection with the aforesaid property, buildings, structures, activities, services, operations, or other facilities.

(b) Each board may establish and enforce parietal rules for students and others, and enter into agreements regarding occupancy, use, and availability of facilities, and the amounts and collection of pledged revenue funds [~~revenues, income, receipts, rentals, rates, charges, fees, or other resources;~~] that will assure making all the required payments and deposits.

(c) Tuition, rentals, rates, and other charges of an institution of higher education authorized by this title [~~Fees for the use by or availability to the students of all or any property, buildings, structures, activities, services, operations, or other facilities;~~] may be pledged to the payment of the bonds[;] and shall be fixed and collected from all or any designated part of the students enrolled in the institution or institutions, or any branch or branches thereof, in the amounts and in the manner as determined and provided by the board in the resolution authorizing the issuance of the bonds; and said tuition, rentals, rates, and other charges [~~fees~~] may be collected in the full amounts required or permitted herein, without regard to actual use, availability, or existence of any facility, commencing at any time designated by the board. [~~Said fees may be fixed and collected for the use or availability of any specifically described property, buildings, structures, activities, services, operations, or other facilities; or said fees may be fixed and collected as general fees for the general use or availability of the institution or institutions, or any branch or branches thereof.~~] Such tuition, rentals, rates, and other charges [~~specific and/or general fees~~] may be fixed and collected, and pledged to the payment of any issue or series of bonds issued by the board, in the full amounts required or permitted herein, in addition to, and regardless of the existence of, any other specific or general fees at the institution or institutions, or any branch or branches thereof; provided that each board may restrict its power to pledge such additional tuition, rentals, rates, or other charges [~~specific or general fees~~] in any manner that may be provided in any resolution authorizing the issuance of bonds, and provided that no such additional tuition, rentals, rates, or other charges [~~specific fees~~] shall be pledged if prohibited by any resolution which authorized the issuance of any then outstanding bonds.

SECTION 2.03. Section 55.24, Education Code, is amended to read as follows:

Sec. 55.24. PLEDGES UNDER PREVIOUS LAWS TO REMAIN IN EFFECT. (a) Where any revenues, income, receipts, or other resources of any board have been pledged to the payment of principal of and interest on any bonds or notes issued and delivered pursuant to any other law, the repeal of such law by virtue of the enactment of Title 3 of this code shall not affect any such pledge or any covenants with respect to such bonds or notes, or any bonds issued to refund same, and all such pledges and covenants shall remain in full force and effect in accordance with the terms and provisions thereof.

(b) Where all or any part of the revenue funds of any board have been pledged to the payment of the principal of and interest on any bonds or notes or any other obligation issued or entered into and delivered pursuant to any provision of this title or any other law, the repeal or amendment of any provision of this title shall not affect any such pledge or any covenants with respect to such bonds, notes, or obligations or any bonds or notes issued to refund same, and all such pledges and covenants shall remain in full force and effect in accordance with the terms and provisions thereof.

(c) In furtherance of the provisions of Subsection (b) and in recognition that certain boards have outstanding bonds, notes, and other obligations secured by various liens on the tuition or a portion of the tuition charged and collected at certain institutions and that the provisions of Chapter 54 would make it difficult or impossible to identify and secure that portion of the revised tuition charges pledged to the payment of such bonds, notes, and obligations, net tuition, as defined in Section 51.009(c) and classified as educational and general funds by such provision, shall be set aside and utilized first to satisfy the obligations of each board secured by tuition in the order of priority of the liens on such funds. It is further provided for the benefit of the owners of such bonds and notes and the counterparties to such obligations of the boards that the charges per semester credit hour or for each semester or summer session, as the case may be, for tuition constituting the educational and general funds portion of tuition shall never be less than the amount charged for the 1996-1997 academic year.

SECTION 2.04. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.25 to read as follows:

Sec. 55.25. APPLICABILITY OF OTHER LAW; CONFLICTS. Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes), apply to all bonds issued pursuant to this chapter; provided, however, that in the event of any conflict between such laws and this chapter, the provisions of this chapter prevail.

ARTICLE 3. VALIDATION, SAVINGS, AND TRANSITIONAL PROVISIONS; EFFECTIVE DATE; EMERGENCY

SECTION 3.01. (a) All revenue bonds heretofore approved by the attorney general and registered by the comptroller, or authorized by proceedings approved by the attorney general, which were issued, sold, and delivered or entered into by any governing board of an institution of higher education and which are payable from or secured by a pledge of any revenues, income, receipts, or other resources of such board, are hereby validated in all

respects, together with all proceedings authorizing the issuance thereof, and said bonds and proceedings are and shall be valid and binding obligations in accordance with their terms and conditions for all purposes, as though they had been duly and legally issued or entered into and authorized originally.

(b) Nothing in this Act limits or impairs any pledge or covenant made by the governing board of an institution of higher education with respect to any bond or note issued before the effective date of this Act.

(c) The provisions of Subsection (b), Section 55.24, Education Code, as added by Section 2.03 of this Act, regarding the effect of an amendment or a repeal on a pledge or covenant made by the governing board of an institution of higher education apply to any such amendment or repeal made by this Act.

SECTION 3.02. (a) This Act takes effect August 1, 1997, if this Act may take effect on that date under Section 39, Article III, Texas Constitution. Otherwise, this Act takes effect September 1, 1997.

(b) The changes in law made by this Act apply beginning with tuition and fees charged for the 1997 fall semester.

SECTION 3.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

GUEST PRESENTED

Senator Lucio was recognized and introduced to the Senate Judge Renato Cuellar of Hidalgo County.

The Senate welcomed Judge Cuellar.

SENATE RESOLUTION 933

Senator Brown offered the following resolution:

WHEREAS, It is a pleasure for the Texas Senate to recognize Eduardo Andres Lucio III on the momentous occasion of his graduation from James Pace High School on June 3, 1997; and

WHEREAS, A member of the gifted and talented program, Eduardo will graduate sixth in a class of 550; and

WHEREAS, This talented young man has won honors repeatedly in the academic as well as the athletic areas of his education; he has been the Varsity Golf Captain from 1993 through 1996, a member of the National Honor Society, and a President's Class Member; and

WHEREAS, The government class president in 1996, he was a student class representative, a civic youth representative, and a member of the student council throughout his high school career; and

WHEREAS, Intelligent and hardworking, Eddie Lucio has earned innumerable awards and honors; he has been in the top five percent of his class at Pace High School since 1993, in Who's Who Among American High School Students for four years, on the United States Honor Roll, and a United States Achievement Winner; and

WHEREAS, An avid and excellent golfer, he was on the All State Texas Christian Interscholastic League Golf Team in 1993 and won sixth place in the All State Texas Christian Interscholastic League play in 1994; and

WHEREAS, During the summer of 1995, Eddie won the Treasure Hills and River Bend Country Club tournaments, and in May, 1997, he was voted Most Valuable Player in 32-5A district golf; and

WHEREAS, This May, Eddie signed a letter of intent to attend Texas Tech University on a partial golf and partial academic scholarship; and

WHEREAS, Eddie has worked in his father's campaigns since 1985 as the student-coordinator and office assistant during the successful election and reelection campaigns; and

WHEREAS, An active participant in his community, he has been a Drug Abuse Resistance Education (D.A.R.E.) Prevention Program Volunteer and has coordinated prevention efforts at the elementary level; and

WHEREAS, Dedicated to the welfare of young children, Eddie has created and promoted Christian education for elementary children at Saint Mary's Mother of the Church since August, 1995; and

WHEREAS, The achievements of Eddie Lucio III have proved quite impressive, and the Texas Senate wishes to honor him; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby congratulate Eduardo Andres Lucio III on his graduation and wish him well in all his future endeavors; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of the highest esteem of the Texas Senate.

BROWN
DUNCAN

The resolution was again read.

The resolution was previously adopted on Thursday, May 29, 1997. The names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

GUEST PRESENTED

Senator Brown was recognized and introduced to the Senate Eduardo Andres Lucio III, son of Senator Lucio.

The Senate welcomed Eduardo.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Friday, May 30, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 302, Instructing the enrolling clerk of the House to make technical corrections to H.B. 39.

HCR 305, Instructing the enrolling clerk of the house to make corrections in H.B. No. 2049.

SB 51, Relating to the forfeiture of good conduct time by certain inmates confined in the institutional division or a transfer facility of the Texas Department of Criminal Justice.
(Amended)

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 1476 (Viva-voce vote)

HB 2909 (Viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 2384

House Conferees: Delisi - Chair/Berlanga/Coleman/Glaze/Janek

HB 2437

House Conferees: Bonnen - Chair/Averitt/Eiland/Lewis, Glenn/Wise

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 148

House Conferees: Rangel - Chair/Cuellar/Kamel/Rabuck/Solis

SB 149

House Conferees: Cuellar - Chair/Bailey/Dunnam/Rabuck/Rangel

SB 247

House Conferees: Culberson - Chair/Hochberg/Rhodes/Williamson/Wohlgemuth

SB 382

House Conferees: Smithee - Chair/Berlanga/Janek/Naishtat/Van de Putte

SB 414

House Conferees: Coleman - Chair/Berlanga/Davila/Hirschi/Longoria

SB 517

House Conferees: Hawley - Chair/Brimer/Coleman/Uher/Williamson

SB 627

House Conferees: Place - Chair/Dunnam/Farrar/Hinojosa/Talton

SB 862

House Conferees: Holzheuser - Chair/Ramsay/Telford/Thompson/Williamson

SB 885

House Conferees: Thompson - Chair/Dukes/Eiland/Rhodes/Solomons

SB 1098

House Conferees: Goodman - Chair/Ehrhardt/Giddings/Gutierrez/Smith

SB 1120

House Conferees: Van de Putte - Chair/Place/Reyna, Arthur/Talton/Yarbrough

SB 1253

House Conferees: Naishtat - Chair/Goodman/McClendon/McReynolds/Staples

SB 1419

House Conferees: Rangel - Chair/Dutton/Swinford/Uher/Wilson

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 966 (Viva-voce vote)

HB 2798 (141 Yeas 0 Nays 1 Present-not voting)

HB 2906 (Viva-voce vote)

HB 2918 (143 Yeas 0 Nays 1 Present-not voting)

HB 2964 (Viva-voce vote)

HB 2981 (Viva-voce vote)

SB 823 (Viva-voce vote)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 1662 (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2017**

Senator Shapleigh submitted the following Conference Committee Report:

Austin, Texas
May 28, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2017** have

had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPLEIGH

MONCRIEF

NELSON

WEST

ZAFFIRINI

On the part of the Senate

MAXEY

COLEMAN

DAVILA

GLAZE

HIRSCHI

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

PERMISSION TO MEET GRANTED

On motion of Senator Sibley and by unanimous consent, the conference committee on **SB 370** was granted permission to meet while the Senate was in session.

SENATE BILL 1898 WITH HOUSE AMENDMENTS

Senator Ratliff called **SB 1898** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1898** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to making emergency appropriations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. TEXAS DEPARTMENT OF HUMAN SERVICES. In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$3,517,300, consisting of federal funds from the Temporary Assistance for Needy Families block grant, is appropriated to the Texas Department of Human Services for the two-year period beginning on the effective date of this Act for the purpose of making modifications to automation systems necessary to administer the federal grants.

SECTION 2. TEXAS HIGHER EDUCATION COORDINATING BOARD. In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$275,000 is appropriated out of the general revenue fund to the Texas Higher Education Coordinating Board for the two-year period beginning on the effective date of this Act for the purpose of providing additional funding for the Texas Pre-freshman Engineering Program.

SECTION 3. TEXAS DEPARTMENT OF CRIMINAL JUSTICE. From the amounts previously appropriated to the Texas Department of Criminal Justice out of general obligation bond proceeds for the biennium ending August 31, 1997, the sum of \$653,211 is reappropriated to the Texas Department of Criminal Justice for the purpose of paying a settlement in the case of *Lucia, Inc. v. Manhattan Construction Company, Inc., et al. v. The*

State of Texas, et al., contingent on the receipt by the State of Texas of a full and complete release from all claims in causes of action related to the case by each party to the case.

SECTION 4. TEXAS SOUTHERN UNIVERSITY. (a) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$10,400,000 is appropriated out of the general revenue fund to Texas Southern University for the two-year period beginning on the effective date of this Act for the purpose of funding existing financial obligations of the university.

(b) Funds appropriated by Subsection (a) of this section may be released for expenditure by the university only in conformance with guidelines requiring the documentation of any prior events or occurrences that have contributed to the financial deficit being addressed by the expenditure of funds appropriated by Subsection (a). The guidelines shall be developed by the comptroller in consultation with the office of the state auditor.

(c) None of the funds appropriated by Subsection (a) of this section may be expended by the university unless the university enters into an agreement with the comptroller to refund to the general revenue fund any reimbursements or other payments received from the federal government related to the financial deficit addressed by the appropriation made by Subsection (a) of this section.

SECTION 5. TEXAS A&M UNIVERSITY AT GALVESTON. In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$300,000 is appropriated out of the general revenue fund to Texas A&M University at Galveston for the period beginning on the effective date of this Act and ending December 31, 1997, for the purpose of restoration and rehabilitation of the severe shoreline erosion in the small boat basin at Texas A&M University at Galveston.

SECTION 6. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION: CONTRACT PAYMENT. (a) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$11,000,000 is appropriated out of the Clean Air Account No. 151 to the Texas Natural Resource Conservation Commission for the two-year period beginning on the effective date of this Act for the purpose of making a payment to MARTA Technologies, Inc., in full and complete satisfaction of a contract relating to the motor vehicle inspection and maintenance program dated September 10, 1993, and without requiring any further accounting of, or an offset for, the sale of land, buildings, or equipment currently owned or held by MARTA Technologies, Inc.

(b) Any payment out of the appropriation made by Subsection (a) of this section to MARTA Technologies, Inc., is made contingent on the prior execution of a release to the state by MARTA Technologies, Inc., by which the party accepting the appropriation agrees that the appropriation is full and final satisfaction of all claims it has asserted, or that it may assert in the future, relating to the emission control contract executed under the emission control program authorized by Chapter 548, Transportation Code, that is the basis of this appropriation and agrees further to indemnify and hold harmless the State of Texas and its agencies, institutions, and departments against all

claims that may be asserted against the State of Texas and its agencies, institutions, and departments resulting from that emission control contract.

(c) In appropriating money to the Texas Natural Resource Conservation Commission for the purpose of payment to MARTA Technologies, Inc., it is the intent of the legislature that the act of appropriating this money in no way creates an obligation on the part of the legislature or any state agency, institution, or department to pay any amounts requested by any party to a contract regarding the emission control program authorized by Chapter 548, Transportation Code. It is also the intent of the legislature that the maximum amount to be expended from the appropriation cannot exceed the amount established by the independent Price-Waterhouse report and recommended by the Texas Natural Resource Conservation Commission.

(d) Notwithstanding Section 382.0622(c), Health and Safety Code, the Texas Natural Resource Conservation Commission is authorized to expend funds appropriated out of the Clean Air Account No. 151 for the payment of judgments or the settlement of claims to the extent that the expenditure is not prohibited by the Act appropriating the funds.

SECTION 7. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 1898** by adding the following appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION _. **WASTE TIRE RECYCLING ACCOUNT NO. 5001.** (a) If the Waste Tire Recycling Fund Account No. 5001 expires as provided by law, effective January 1, 1998, the comptroller shall transfer the unobligated balance deposited to the credit of the account to the undedicated portion of the general revenue fund, less the amount appropriated by Subsection (c) of this section. The comptroller shall credit to the undedicated portion of the general revenue fund any revenue, including depository interest, that would have been deposited to the credit of the account.

(b) Sufficient cash may be maintained in the account to satisfy all remaining obligations of the account as of December 31, 1997. On final resolution of all outstanding obligations of the account, the comptroller shall transfer any remaining balance to the undedicated portion of the general revenue fund.

(c) In addition to amounts appropriated by the General Appropriations Act for the fiscal biennium beginning September 1, 1997, the sum of \$9,065,460 is appropriated out of the Waste Tire Recycling Account No. 5001 to the Texas Natural Resource Conservation Commission for that biennium for the sole purpose of making payments to actual end users of shredded tire pieces and of whole scrap tires from a priority enforcement list site identified in an inventory conducted by the commission after September 1, 1997.

(d) If the General Appropriations Act for the fiscal biennium beginning September 1, 1997, contains appropriations from the Waste Tire Recycling Account No. 5001, the comptroller shall change the method of financing the appropriations in accordance with this section.

Floor Amendment No. 2

Amend **CSSB 1898** by adding an appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION __. TEXAS HIGHER EDUCATION COORDINATING BOARD. In addition to other amounts appropriated for the fiscal biennium beginning September 1, 1997, the sum of \$1,250,000 is appropriated for the fiscal year ending August 31, 1998, and the additional sum of \$1,250,000 is appropriated for the fiscal year ending August 31, 1999, from the general revenue fund to the Texas Higher Education Coordinating Board for the purpose of establishing and supporting centers for teacher education at predominately minority, private, general academic institutions. The board may expend the appropriations made by this section only through contract with an association of private developing colleges. In contracting as provided by this section, the board shall give priority to centers located at Texas College, Huston-Tillotson College, and Wiley College. The board may require the periodic submission of data and reports as the board considers necessary to assess the overall performance of the centers.

Floor Amendment No. 3

Amend **CSSB 1898** by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION __. SUL ROSS STATE UNIVERSITY. Any unexpended balances as of August 31, 1997, in the appropriation out of the general revenue fund made by Chapter 1063, Acts of the 74th Legislature, Regular Session, 1995 (the General Appropriations Act) for the student center at Sul Ross State University are reappropriated to the university for the fiscal biennium beginning September 1, 1997, for the same purposes.

Floor Amendment No. 4

Amend **CSSB 1898** by adding an appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION __. TEXAS HIGHER EDUCATION COORDINATING BOARD. In addition to other amounts appropriated for the fiscal biennium beginning September 1, 1997, the sum of \$5,000,000 is appropriated for the fiscal year ending August 31, 1998, and the additional sum of \$5,000,000 is appropriated for the fiscal year ending August 31, 1999, from the general revenue fund to the Texas Higher Education Coordinating Board for C.1.14 Strategy Tuition Assistance Grants as provided by the General Appropriations Act for the fiscal biennium beginning September 1, 1997.

Floor Amendment No. 5

Amend **CSSB 1898** by adding the following appropriately numbered section:

SECTION ____. TEXAS EDUCATION AGENCY. None of the funds appropriated to the Texas Education Agency by Chapter 1063, Acts of the 74th Legislature, Regular Session, 1995 (the General Appropriations Act), in appropriation item A.3.3., Accountability System, may be expended by the Texas Education Agency for any purpose and such appropriation shall lapse to the credit of the unappropriated balance of the state general revenue fund on the effective date of this Act.

Amendment No. 7

Amend **CSSB 1898** by adding the following **SECTION 7** and renumbering the subsequent section:

SECTION 7. TEXAS EDUCATION AGENCY. The Texas Education Agency shall expend all funds appropriated to Strategy A.1.2. Textbooks in the 1996-1997 appropriations act for the purchase of textbooks during that biennium, including purchase of textbooks delivered during the biennium for use in the 1997-1998 or subsequent school years. The State Board of Education shall increase the per capita rate for distribution of the Available School Fund to distribute all revenues projected for receipt during the 1996-1997 biennium, in accordance with the estimated method of financing for the Foundation School Program in the 1996-1997 appropriations act. No funds appropriated from the Available School Fund, the Textbook Fund or the Foundation School Fund for the 1996-1997 biennium shall be used for payment of a technology allotment in excess of the \$30 per student amount set in Section 31.021(b), Texas Education Code.

Floor Amendment No. 8

Amend **CSSB 1898** as follows:

(1) Add the following appropriately numbered sections:

SECTION ____. COMPTROLLER. (a) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$70,000,000 is appropriated out of the following funds and accounts to the comptroller for the two-year period beginning on the effective date of this Act for the purpose of making payment to Tejas Testing Technology One, L.C., Tejas Testing Technology Two, L.C., and Snap-On, Inc., in partial payment of the settlement of claims under the settlement agreement entered in *Cause No. 95-1462, Tejas Testing Technology One, L.C., et al. v. The State of Texas, et al.*:

(1) \$30,000,000 out of the Clean Air Account No. 151;

(2) \$30,000,000 out of the Petroleum Storage Tank Remediation Fund No. 655; and

(3) \$10,000,000 out of the Hazardous and Solid Waste Remediation Fee Fund No. 550.

(b) Any payment of the appropriation made by Subsection (a) of this section is made contingent on the prior execution of a release acceptable to

the attorney general that is consistent with the settlement agreement in the case described by Subsection (a) and that represents a full and complete satisfaction of all claims the settling party has asserted, or that it may assert in the future, under that or any other cause number in any state or federal court, relating to the 1993 emissions contract or the passage of Chapters 1 and 34, Acts of the 74th Legislature, Regular Session, 1995.

SECTION __ . TEXAS NATURAL RESOURCE CONSERVATION COMMISSION: OUTSIDE COUNSEL. In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$300,000 is appropriated out of the Clean Air Account No. 151 to the Texas Natural Resource Conservation Commission for the two-year period beginning on the effective date of this Act for the purpose of paying outside legal counsel to represent the state in the matter of *Tejas Testing Technology One, L.C., et al. v. Texas Natural Resource Conservation Commission, et al.* Payment of the appropriation made by this section is contingent on:

(1) approval of the outside legal counsel by the attorney general as having demonstrated competence and qualifications to perform the services for a fair and reasonable price; and

(2) quarterly reporting by the outside legal counsel to the governor, the attorney general, the Texas Natural Resource Conservation Commission, and the Legislative Budget Board on the fees and expenses incurred and the progress made by the outside legal counsel in representing the state.

SECTION __ . TEXAS NATURAL RESOURCE CONSERVATION COMMISSION: ANNUAL PAYMENTS. (a) In addition to amounts previously appropriated for the current fiscal biennium, the sum of \$5,240,567 is appropriated for the one-year period beginning on the effective date of this Act, and the additional sum of \$5,240,567 is appropriated for the one-year period beginning on the first anniversary of the effective date of this Act, out of the Clean Air Account No. 151 to the Texas Natural Resource Conservation Commission for the purpose of making payments in partial payment of claims under the settlement agreement entered in *Cause No. 95-1462, Tejas Testing Technology One, L.C., et al. v. The State of Texas, et al.*

(b) From the amounts appropriated to the Texas Natural Resource Conservation Commission by the General Appropriations Act for the fiscal biennium beginning September 1, 1997, out of the Petroleum Storage Tank Remediation Fund No. 655, the sum of \$16,842,389 may be used for the fiscal year ending August 31, 1998, and the additional sum of \$16,842,389 may be used for the period beginning September 1, 1998, and ending on the second anniversary of the effective date of this Act, by the commission for the purpose of making payments in partial payment of claims under the settlement agreement entered in *Cause No. 95-1462, Tejas Testing Technology One, L.C., et al. v. The State of Texas, et al.*

(c) The appropriations made by this section are contingent on the prior execution of the release required by this Act as a condition for the first partial payments in the case described by Subsections (a) and (b) of this section.

(2) In SECTION 6 of the bill, in Subsection (b), between "Transportation Code," and "that" (House Committee Report, page 3, line 26), insert "and Chapter 382, Health and Safety Code,".

(3) In SECTION 6 of the bill, in Subsection (c), between "Transportation Code" and the period (House Committee Report, page 4, line 12), insert ", and Chapter 382, Health and Safety Code".

(4) In SECTION 6 of the bill, strike Subsection (d) (House Committee Report, page 4, lines 17-22).

(5) Renumber sections of the bill as appropriate.

Floor Amendment No. 9

Amend the Junell amendment to **CSSB 1898** in the third added section to the bill, in Subsection (a), by striking "Clean Air Account No. 151" and substituting "Hazardous and Solid Waste Remediation Fee Fund No. 550".

Floor Amendment No. 10

Amend **CSSB 1898** by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION __. COMPTROLLER: TEJAS OPERATING CONTRACTORS.

(a) In addition to amounts previously appropriated for the current fiscal biennium, a sum not to exceed \$6,000,000 is appropriated out of the general revenue fund to the comptroller for the two-year period beginning on the effective date of this Act for the purpose of making payments to operating contractors of local stations in full satisfaction of the parties' claims arising out of *Cause No. 95-1462, Tejas Testing Technology One, L.C., et al. v. The State of Texas, et al.*

(b) Any payment of the appropriation made by Subsection (a) of this section is made contingent on the prior execution of a release acceptable to the attorney general that is consistent with a settlement agreement in the case described by Subsection (a) and that represents a full and complete satisfaction of all claims the settling party has asserted, or that it may assert in the future, under that or any other cause number in any state or federal court, relating to the 1993 emissions contract or the passage of Chapters 1 and 34, Acts of the 74th Legislature, Regular Session, 1995.

Floor Amendment No. 11

Amend Floor Amendment No. 10 to read as follows:

Amend **CSSB 1898** by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION __. COMPTROLLER: TEJAS OPERATING CONTRACTORS.

(a) In addition to amounts previously appropriated for the current fiscal biennium, a sum not to exceed \$10,000,000 is appropriated out of the general revenue fund to the comptroller for the two-year period beginning on the effective date of this Act for the purpose of making payments to operating contractors of local stations in full satisfaction of the parties' claims arising out of *Cause No. 95-1462, Tejas Testing Technology One, L.C., et al. v. The State of Texas, et al.*

(b) Any payment of the appropriation made by Subsection (a) of this section is made contingent on the prior execution of a release acceptable to the attorney general that is consistent with a settlement agreement in the case described by Subsection (a) and that represents a full and complete

satisfaction of all claims the settling party has asserted, or that it may assert in the future, under that or any other cause number in any state or federal court, relating to the 1993 emissions contract or the passage of Chapters 1 and 34, Acts of the 74th Legislature, Regular Session, 1995.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 1898** on third reading by amending the section of the bill relating to centers for teacher education, as added by Floor Amendment No. 2 on second reading, to read as follows:

SECTION ____ . TEXAS HIGHER EDUCATION COORDINATING BOARD. (a) In addition to other amounts appropriated for the fiscal biennium beginning September 1, 1997, the sum of \$1,250,000 is appropriated for the fiscal year ending August 31, 1998, and the additional sum of \$1,250,000 is appropriated for the fiscal year ending August 31, 1999, from the general revenue fund to the Texas Higher Education Coordinating Board for the purpose of supporting centers for teacher education at private, independent, general academic institutions that are component institutions of the Texas Association of Developing Colleges. Consideration shall be given to teacher education centers at Jarvis Christian College in Hawkins, Paul Quinn College in Dallas, Texas College in Tyler, Huston-Tillotson College in Austin, and Wiley College in Marshall. The board may require the periodic submission of data and reports as the board considers necessary to assess the overall performance of the centers.

(b) The Texas Higher Education Coordinating Board shall retain two percent of the appropriations made by Subsection (a) of this section for the costs of on-site monitoring and distribution of funds. The board may use a portion of the amounts retained to obtain the services of a program planner to facilitate and coordinate the process of curriculum development and program redesign to improve teacher preparation at the participating institutions.

The amendments were read.

Senator Ratliff moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1898** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Truan, Zaffirini, Brown, and Sibley.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2906 ADOPTED**

Senator Ratliff called from the President's table the Conference Committee Report on **HB 2906**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Ratliff, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2777 ADOPTED**

Senator Ratliff called from the President's table the Conference Committee Report on **HB 2777**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Ratliff, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 581 WITH HOUSE AMENDMENTS

Senator Ratliff called **SB 581** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 581** as follows:

In SECTION 1 of the bill, in Section 466.355(b) (2), Government Code (engrossed version, page 1, line 14), between "biennium" and the semicolon, insert "and as long as the payment is not used to purchase a televised advertisement of 30 seconds or more unless the advertisement includes in a clear and conspicuous manner the toll-free "800" number established by the Texas Commission on Alcohol and Drug Abuse under Section 461.018, Health and Safety Code".

Floor Amendment No. 1 on Third Reading

Amend **SB 581** on third reading by striking the text of second reading Amendment No. 1.

The amendments were read.

On motion of Senator Ratliff, the Senate concurred in the House amendments to **SB 581** by a viva voce vote.

SENATE BILL 839 WITH HOUSE AMENDMENT

Senator Bivins called **SB 839** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **SB 839** as follows:

(1) In SECTION 2 of the bill, strike Subsection (b) of Section 551.126, Government Code (senate engrossment, page 1, lines 14-16), and substitute the following:

(b) A meeting may be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting.

(2) In SECTION 2 of the bill, in the first sentence of Subsection (d) of Section 551.126, Government Code (senate engrossment, page 1, line 22), strike "meetings of the governmental body are usually held" and substitute "a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location".

(3) In SECTION 2 of the bill, in the second sentence of Subsection (d) of Section 551.126, Government Code (senate engrossment, page 2, line 1), between "each" and "location where", insert "other".

(4) In SECTION 2 of the bill, add the following new Subsection (j) to Section 551.126, Government Code (senate engrossment, page 3, between lines 6 and 7):

(j) Without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call.

The amendment was read.

On motion of Senator Bivins, the Senate concurred in the House amendment to **SB 839** by a viva voce vote.

SENATE BILL 121 WITH HOUSE AMENDMENTS

Senator Bivins called **SB 121** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 121** in Section 1 of the bill, in added Article 27.18(c), Chapter 27, Code of Criminal Procedure, by striking "the 120th day after the date the recording is made" and substitute "all appellate proceedings have been disposed" (House committee report page 2, line 6).

Floor Amendment No. 2

Amend **SB 121** in Section 1 of the bill, in added Article 27.18(c), Chapter 27, Code of Criminal Procedure, between "the costs of production" and the period, insert "or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy" (House committee report page 2, line 8).

The amendments were read.

On motion of Senator Bivins, the Senate concurred in the House amendments to **SB 121** by a viva voce vote.

SENATE RESOLUTION 935

Senator Whitmire offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed

to resolve the differences on **HB 1301** to consider and take action on the following matter:

Senate Rules 12.03(2) and (3) are suspended to permit the committee in renumbered SECTION 4 of the bill to strike "issued to a nongovernmental entity under 18 U.S.C. Section 1761" and substitute "issued before January 1, 1993, under 18 U.S.C. Section 1761".

Explanation: This change is necessary to provide a more accurate description of entities previously certified under federal law.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1301

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1301** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1301** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; Shapleigh, Wentworth, Patterson, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 972

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 972** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 972** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; Patterson, Moncrief, Gallegos, and Duncan.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2918 ADOPTED

Senator Whitmire called from the President's table the Conference Committee Report on **HB 2918**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Whitmire, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1176 WITH HOUSE AMENDMENT

Senator Whitmire called **SB 1176** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1176** on page 1, line 12, by inserting "nor to a bona fide purchaser for value from a devisee in a will" between "testator" and "."

The amendment was read.

On motion of Senator Whitmire, the Senate concurred in the House amendment to **SB 1176** by a viva voce vote.

SENATE BILL 1161 WITH HOUSE AMENDMENT

Senator Carona called **SB 1161** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1161** as follows:

(1) On page 2, line 11, add a new subsection (7) to read as follows:

"(7) perform any duty or function in connection with the state case registry established and operated by the Title IV-D agency under 42 U.S.C. Section 654a that has responsibility for maintaining records with respect to child support orders in all Title IV-D cases and in all other cases in which a support order is rendered or modified under the Family Code."

(2) Renumber subsections accordingly.

The amendment was read.

On motion of Senator Carona, the Senate concurred in the House amendment to **SB 1161** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1230

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1230** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1230** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Fraser, Haywood, Madla, and Bivins.

SENATE BILL 1114 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1114** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1114** as follows:

On page 1, lines 4-9, strike subsection (a) and substitute the following:

SECTION 1. PILOT PROGRAM. (a) The Texas Workforce Commission by rule shall develop a "wheels for work" pilot program in four sites to make donated cars available at a low cost to certain persons who receive financial assistance under Chapter 31, Human Resources Code, to enable those persons to find and maintain employment. The commission shall determine the pilot sites, with at least one site in an urban area and at least one site in a rural area.

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1114** by a viva voce vote.

SENATE BILL 1249 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1249** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1249** as follows: On page 6, line 2, strike the number "1998" and substitute the number "1997". On page 6, line 3, strike the number "1998" and substitute the number "1997". On page 6, line 8, strike the number "1998" and substitute the number "1997". On page 6, line 9, strike the number "1998" and substitute the number "1997".

The amendment was read.

On motion of Senator Ellis, the Senate concurred in the House amendment to **SB 1249** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2837

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2837** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2837** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Lucio, Lindsay, Wentworth, and Barrientos.

CONFERENCE COMMITTEE ON HOUSE BILL 1200

Senator Brown called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1200** and moved that the request be granted.

The motion prevailed.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1200** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Armbrister, Lindsay, Nelson, and Whitmire.

AT EASE

Senator Patterson at 10:56 a.m. moved that the Senate would stand At Ease subject to the call of the Chair.

The motion prevailed.

IN LEGISLATIVE SESSION

Senator Lucio at 12:04 p.m. called the Senate to order as In Legislative Session.

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

SB 24, SB 34, SB 55, SB 102, SB 115, SB 185, SB 211, SB 241, SB 258, SB 324, SB 349, SB 472, SB 527, SB 548, SB 633, SB 656, SB 665, SB 701, SB 756, SB 877, SB 1063, SB 1069, SB 1102, SB 1232, SB 1240, SB 1247, SB 1263, SB 1276, SB 1384, SB 1438, SB 1581, SB 1653, SB 1766, SB 1810, SB 1814, SB 1937, SB 1955, SCR 51, SCR 77, SCR 102, SCR 104, SJR 33, HB 51, HB 196, HB 242, HB 251, HB 328, HB 330, HB 438, HB 506, HB 580, HB 591, HB 607, HB 670, HB 677, HB 724, HB 970, HB 1142, HB 1161, HB 1324, HB 1465, HB 1516, HB 1548, HB 1553, HB 1908, HB 2065, HB 2128, HB 2214, HB 2332, HB 2491, HB 2541, HB 2736, HB 2827, HB 2866, HB 2984, HB 3062, HB 3088, HB 3194, HB 3370, HB 3583, HB 3602, HCR 86, HCR 215, HCR 269, HCR 281

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 298**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 298** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS	MADDEN
BARRIENTOS	DANBURG
SHAPLEIGH	DENNY
WEST	GALLEGO
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE ON HOUSE BILL 2088

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2088** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2088** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Carona, Galloway, Gallegos, and Madla.

HOUSE CONCURRENT RESOLUTION 302

The Presiding Officer laid before the Senate the following resolution:

HCR 302, Instructing the enrolling clerk of the House to make technical corrections to **HB 39**.

ZAFFIRINI

The resolution was read.

On motion of Senator Zaffirini and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2914

Senator Galloway called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2914** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2914** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Galloway, Chair; Lindsay, Nixon, Gallegos, and Brown.

CONFERENCE COMMITTEE ON HOUSE BILL 2850

Senator Galloway called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2850** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2850** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Galloway, Chair; Gallegos, Whitmire, Lindsay, and Nixon.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2964 ADOPTED

Senator Nixon called from the President's table the Conference Committee Report on **HB 2964**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Nixon, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3350

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3350** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3350** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Armbrister, Patterson, Nelson, and Shapiro.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Friday, May 30, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 321, Instructing the enrolling clerk of the house to make a technical correction in H.B. No. 3116.

HCR 322, Expressing appreciation to Dr. Glenn A. Goerke for his contributions to higher education in the state of Texas.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

SENATE BILL 1674 WITH HOUSE AMENDMENTS

Senator Barrientos called **SB 1674** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 1674** as follows:

(1) On page 2, line 8, add the following phrase between "created" and "and:" in a county with a population or more than 500,000.

(2) On page 3, lines 7 and 8, strike "100 registered voters who reside in the territory of the proposed district" and substitute "5 percent of the number of voters in the territory of the proposed district who voted in the most recent gubernatorial election".

(3) On page 7, line 4, add the following phrase before the word "registered:" resident of the district and a.

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **SB 1674** (Committee Printing page 16, line 5) by striking "500,000" and inserting "150,000".

Floor Amendment No. 1 on Third Reading

Amend **SB 1674**, on third reading, in SECTION 1 of the bill, in proposed Section 326.022, Local Government Code, by inserting the following:

(d) After a district is created, the district may not be expanded to include additional territory unless the commissioners court of the county in which the district is located calls and holds an election for that purpose in the territory to be added to the district. The commissioners court may not expand the district unless a majority of the voters voting at the expansion election approve the expansion of the district.

Floor Amendment No. 2 on Third Reading

Amend **SB 1674**, on third reading, in SECTION 1 of the bill, in proposed Section 326.004(a), Local Government Code, by striking "in a county with a population or more than 150,000" and substituting "in a county with a population of more than 100,000".

The amendments were read.

On motion of Senator Barrientos, the Senate concurred in the House amendments to **SB 1674** by a viva voce vote.

SENATE BILL 542 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 542** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 542** as follows:

(1) In SECTION 1 of the bill, in amended Section 22.011(b)(9), Penal Code (senate engrossment, page 2, lines 9-21), strike the text beginning with "a physician licensed under" and ending with "Title 71, Revised Statutes.", and substitute "or a health care services provider".

(2) Add an appropriately numbered SECTION to the bill to read as follows and renumber existing SECTIONS of the bill accordingly:

SECTION ____ . Section 22.011(c), Penal Code, is amended by adding Subdivision (3) to read as follows:

(3) "Health care services provider" means:

(A) a physician licensed under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(B) a chiropractor licensed under Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes);

(C) a licensed vocational nurse licensed under Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes);

(D) a physical therapist licensed under Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes);

(E) a physician's assistant licensed under the Physician Assistant Licensing Act (Article 4495b-1, Vernon's Texas Civil Statutes); or

(F) a registered nurse or an advanced practice nurse licensed under Chapter 7, Title 71, Revised Statutes.

The amendment was read.

On motion of Senator Barrientos, the Senate concurred in the House amendment to **SB 542** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 966 ADOPTED

Senator Barrientos called from the President's table the Conference Committee Report on **HB 966**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1391

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1391** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1391** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Truan, Shapleigh, Carona, and Sibley.

SENATE BILL 1440 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1440** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1440** as follows:

Strike Section 3 of the bill and re-number remaining sections accordingly.

The amendment was read.

Senator Wentworth moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1440** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; West, Brown, Ogden, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 3157

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3157** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3157** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Brown, Cain, Bivins, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 951

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 951** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 951** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Cain, Bivins, Ellis, and Moncrief.

CONFERENCE COMMITTEE ON HOUSE BILL 1285

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1285** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1285** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Carona, Ellis, Cain, and Lindsay.

SENATE BILL 1100 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 1100** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1100** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of real estate brokers, salespersons, and inspectors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2(5), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Person" means an individual or any other entity including a government or governmental subdivision or agency, a limited liability company, a limited liability partnership, a partnership, or a corporation, foreign or domestic.

SECTION 2. Section 3, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. EXEMPTIONS. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act:

- (1) an attorney at law licensed in this state or in any other state;
- (2) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;
- (3) a public official in the conduct of his official duties;
- (4) a person calling the sale of real estate by auction under the authority of a license issued by this state provided the person does not perform any other act of a real estate broker or salesman as defined by this Act;
- (5) a person acting under a court order or under the authority of a will or a written trust instrument;
- (6) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;
- (7) an on-site manager of an apartment complex;
- (8) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;

(9) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;

(10) transactions involving the sale, lease, or transfer of cemetery lots; ~~[or]~~

(11) transactions involving the renting, leasing, or management of hotels or motels; or

(12) a partnership or limited liability partnership acting as a broker or real estate salesman through a partner who is a licensed real estate broker.

SECTION 3. Sections 7(a), (c), and (e), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for a real estate license fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement must be satisfied not later than six months after the date on which the application for a license is filed. Courses of study required for a license may include but are not limited to the following, which shall be considered core real estate courses for all purposes of this Act:

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, ~~[law of agency,]~~ deeds, encumbrances and liens, distinctions between personal and real property, ~~[contracts,]~~ appraisal, finance and regulations, closing procedures, real estate mathematics, and at least three classroom hours of instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arithmetic skills and review of mathematical logic, percentages, interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters depreciation, and applications to property tax.

(10) Law of Agency (or equivalent) shall include but not be limited to the principal-agent and master-servant relationships, the authority of an agent, the termination of an agent's authority, the fiduciary and other duties of an agent, employment law, deceptive trade practices, listing or buying representation procedures, and the disclosure of agency.

(11) Law of Contracts (or equivalent) shall include the elements of a contract, offer and acceptance, the statute of frauds, specific performance and remedies for breach, unauthorized practice of law, commission rules relating to use of adopted forms, and owner disclosure requirements.

(c) The commission shall waive the examination of an applicant for a broker license who has, within one year previous to the filing of his application, been licensed in this state as a broker, and shall waive the examination of an applicant for a salesman license who has, within one year previous to the filing of his application, been licensed in this state as either a broker or salesman. The commission by rule may provide for the waiver of some or all of the requirements for a license under this Act for an applicant who was licensed under this Act within the six years preceding the date of filing the application.

(e) Each applicant for a salesman license shall furnish the commission satisfactory evidence of having completed 12 semester hours, or equivalent classroom hours, of postsecondary education, six hours of which must be completed in core real estate courses, of which a minimum of two hours must be completed in Principles of Real Estate as described in Subsection (a)(1) of this section, [and] a minimum of two hours must be completed in Law of Agency as described in Subsection (a)(10) of this section, and a minimum of two hours must be completed in Law of Contracts as described in

Subsection (a)(11) of this section. The remaining six hours shall be completed in core real estate courses or related courses. As a condition for the first renewal of a salesman license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 14 semester hours, or equivalent classroom hours, eight hours of which must be completed in core real estate courses. As a condition for the second renewal of a salesman license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 16 semester hours, or equivalent classroom hours, 10 hours of which must be completed in core real estate courses. As a condition for the third renewal of a salesman license, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 18 semester hours, or equivalent classroom hours, 12 hours of which must be completed in core real estate courses.

SECTION 4. Section 7A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (g) to read as follows:

(g) The commission may adopt rules that establish procedures under which a license may be issued, renewed, or returned to active status before the applicant completes the continuing education requirements of this section. The commission may prescribe an additional fee, not to exceed \$200, for the issuance, renewal, or return to active status of a license before the applicant completes the continuing education requirements of this section and may require the applicant to complete the required continuing education not later than the 60th day after the date the license is issued, renewed, or returned to active status.

SECTION 5. Section 11(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall charge and collect the following fees:

- (1) a fee not to exceed \$100 for the filing of an original application for a real estate broker license;
- (2) a fee not to exceed \$100 for annual renewal of a real estate broker license;
- (3) a fee not to exceed \$50 for the filing of an original application for a real estate salesman license;
- (4) a fee not to exceed \$50 for annual renewal of a real estate salesman license;
- (5) a fee not to exceed ~~\$50~~ **\$25** for an application for a license examination;
- (6) a fee not to exceed \$20 for filing a request for a license for each additional office or place of business;
- (7) a fee not to exceed \$20 for filing a request for a license for a change of place of business, change of name, return to active status, or change of sponsoring broker;
- (8) a fee not to exceed \$20 for filing a request to replace a license lost or destroyed;
- (9) a fee not to exceed \$400 for filing an application for approval of an education program under Section 7(f) of this Act;
- (10) a fee not to exceed \$200 a year for operation of an education program under Section 7(f) of this Act;

- (11) a fee of \$15 for transcript evaluation;
- (12) a fee not to exceed \$10 for preparing a license history;
- (13) a fee not to exceed \$50 for the filing of an application for a moral character determination;
- (14) an annual fee of \$20 from each real estate broker to be transmitted to Texas A&M University for the Texas Real Estate Research Center as provided by Section 5(m) of this Act; and
- (15) an annual fee of \$17.50 from each real estate salesman to be transmitted to Texas A&M University for the Texas Real Estate Research Center as provided by Section 5(m) of this Act.

SECTION 6. Section 15B, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated only upon the commission's own motion or a signed written complaint from a person ~~[consumer or service recipient]~~. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise.

(e) The commission may authorize a commission employee to file a signed written complaint against a licensee and to conduct an investigation if:

- (1) a judgment against the licensee has been paid from a recovery fund established under this Act;
- (2) the licensee is convicted of a criminal offense that may constitute grounds for the suspension or revocation of the licensee's license; or
- (3) the licensee fails to make good a check issued to the commission.

SECTION 7. Section 23(b)(2), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) The committee is composed of nine members appointed by the commission. The members of the committee hold office for staggered terms of six years, with the terms of three members expiring February 1 of each odd-numbered year. Each member holds office until the member's successor is appointed. Appointments to the committee shall be made without regard to the sex, race, color, age, handicap, religion, or national origin of the appointees. In the event of a vacancy during a term, the commission shall appoint a replacement who meets the qualifications for appointment under this subdivision to fill the unexpired part of the term. A member of the committee must be a professional inspector actively engaged in the practice of real estate inspecting at the time of appointment and must have been primarily engaged in the practice of real estate inspecting for at least five years before the member's appointment. No more than three members ~~[A member]~~ of the committee may ~~[not]~~ hold a real estate broker or salesman license. Each

member of the committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act. The committee shall annually elect from its members a chairman, a vice-chairman, and secretary. A quorum of the committee consists of five members.

SECTION 8. Section 23(d), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by amending Subdivision (4) and adding Subdivision (6) to read as follows:

(4) The commission by rule ~~shall~~ may provide for the substitution of relevant experience or additional education in lieu of the number of real estate inspections required by this section and in lieu of the requirement that the applicant be licensed as an apprentice inspector or a real estate inspector before issuance of a license as a real estate inspector or professional inspector. The rules adopted by the commission under this subdivision may not require an applicant to complete more than 60 additional classroom hours of core real estate inspection courses.

(6) Before a licensed professional inspector may sponsor an apprentice inspector or a real estate inspector, the professional inspector must provide sufficient proof to the commission that the professional inspector has completed not less than 200 real estate inspections while licensed as a professional inspector under this Act.

SECTION 9. Section 24(g), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is repealed.

SECTION 10. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) The change in law made by this Act to Section 7(e), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as amended by this Act, takes effect January 1, 1998.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend CSSB 1100 as follows:

(1) In SECTION 4 of the bill, in the introductory language for the section, (committee printing, page 7, line 10), strike "Subsection (g)" and substitute "Subsections (g) and (h)".

(2) In SECTION 4 of the bill, after added Subsection (g) (committee printing, page 7, between lines 20 and 21), insert the following:

(h) A member of the legislature who holds an active real estate broker license or active real estate salesman license under this Act is exempt from the continuing education requirements of this section.

Floor Amendment No. 2

Amend CSSB 1100, in SECTION 7 of the bill, in amended Section 23(b)(2), The Real Estate License Act (Article 6573a, Vernon's

Texas Civil Statutes), in the seventh sentence (House Committee Printing, page 10, lines 24-25), by striking "or salesman" and substituting "[or salesman]".

Amendment No. 3

Amend **CSSB 1100** by adding a new SECTION 4 to the bill to read as follows and renumbering subsequent SECTIONS accordingly:

"SECTION 4. Section 7A(a), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7A. (a) To renew an active real estate broker license or an active real estate salesman license that is not subject to the annual education requirements of this Act, the licensee must provide the commission proof of attendance of at least 15 classroom hours of continuing education courses approved by the commission during the term of the current license. The commission by rule may provide for the substitution of relevant educational experience or correspondence courses approved by the commission instead of classroom attendance. In addition, supervised video instruction may be approved by the commission as a course counting as classroom hours of mandatory continuing education. At least six hours of instruction must be devoted to the rules of the commission, fair housing laws, landlord-tenant law and other Property Code issues, agency laws, antitrust laws, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), disclosures to buyers, landlords, tenants, and sellers, current contract and addendum forms, the unauthorized practice of law, case studies involving violations of laws and regulations, current Federal Housing Administration and Department of Veterans Affairs regulations, tax laws, property tax consulting laws and legal issues, or other legal topics approved by the commission. The remaining hours may be devoted to other real estate-related topics approved by the commission. The commission may consider equivalent courses for continuing education credit. Property tax consulting laws and legal issues include but are not limited to the Tax Code, preparation of property tax reports, the unauthorized practice of law, agency laws, tax laws, laws concerning property taxes or assessments, deceptive trade practices, contract forms and addendum, and other legal topics approved by the commission. Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit and core real estate courses under Section 7(a) of this Act shall automatically be approved as mandatory continuing education courses under this Act. The commission may not require examinations except for correspondence courses or courses offered by alternative delivery systems such as computers. Daily classroom course segments must be at least one hour [~~three hours~~] long but not more than 10 hours long.

Floor Amendment No. 4

Amend **CSSB 1100** as follows:

(1) Insert the following appropriately numbered SECTION:

SECTION _____. Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (r) to read as follows:

(r) The commission by rule shall prescribe standard forms to be used by inspectors to reduce discrepancies and create consistency in preparing reports of real estate inspections.

(2) In the transition portion of the bill, insert the following appropriately numbered SECTION:

SECTION _____. The Texas Real Estate Commission shall adopt rules prescribing standard real estate inspection forms required by Section 23(r), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by this Act, not later than October 1, 1997.

(3) Renumber SECTIONS of the bill accordingly.

Floor Amendment No. 6

Amend CSSB 1100 as follows:

(1) Add the following new section in the appropriate location and renumber subsequent sections appropriately:

"SECTION _____. Section 20, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding a new subsection (d) to read as follows:

(d) This section does not apply to agreements between licensees to share compensation. This section does not limit a cause of action between brokers for interference of business relationships."

Floor Amendment No. 7

Amend CSSB 1100 as follows:

1. Add the following appropriately numbered sections:

SECTION _____. Subdivision (5), Section 2, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Person" means and individual or any other entity, including but not limited to[-] a governmental body, limited liability company, limited liability partnership, partnership, or [x] corporation, foreign or domestic.

SECTION _____. Section 3, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act:

- (1) an attorney at law licensed in this state or in any other state;
- (2) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;
- (3) a public official in the conduct of his official duties;
- (4) a person calling the sale of real estate by auction under the authority of a license issued by this state provided the person does not perform any other act of a real estate broker or salesman as defined by this Act;

(5) a person acting under a court order or under the authority of a will or a written trust instrument;

(6) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;

(7) an on-site manager of an apartment complex;

(8) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;

(9) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;

(10) transactions involving the sale, lease, or transfer of cemetery lots; ~~or~~

(11) transactions involving the renting, leasing, or management of hotels or motels; ~~or~~

~~(12) a partnership or limited liability partnership performing an act constituting an act of a broker or salesman, as defined by this Act, through a partner who is duly licensed as a real estate broker; or~~

~~(13) a person registered under Section 9A of this Act who sells, buys, leases, or transfers an easement or right-of-way for use in connection with telecommunication, utility, railroad, or pipeline service.~~

SECTION _____. Section 4, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. A person who, directly or indirectly for another, with the intention or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, a single act defined in Subdivisions 2 and 3, Section 2 of this Act, whether as a part of a transaction, or as an entire transaction, is deemed to be acting as a real estate broker or salesman within the meaning of this Act. The commission of a single such act by a person required to be licensed or registered under this Act and not so licensed or registered shall constitute a violation of this Act.

SECTION _____. Subsection (m), Section 5, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(m) The commission shall charge and collect as a condition for issuance and for renewal of a real estate broker license the fee under Section 11(a)(14) of this Act. The commission shall charge and collect as a condition for issuance and for renewal of a registration under Section 9A of this Act the fee under Section 11(a)(14) of this Act. The commission shall charge and collect as a condition for issuance and for renewal of a real estate salesman license the fee under Section 11(a)(15) of this Act. The commission shall transmit the fees under this subsection quarterly to Texas A&M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center. However, all money expended from the separate account shall be as determined by legislative appropriation.

SECTION _____. Section 6, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) For an individual to be eligible for a registration or a renewal of a registration under Section 9A of this Act, the individual must be a citizen of

the United States or a lawfully admitted alien and be at least 18 years of age. For a corporation, limited liability company, partnership, limited liability partnership, or any other entity to be eligible for a registration or renewal of a registration under Section 9A of this Act, it must designate one of its officers, partners, or managers to act for it. The designated person must be an individual registered under Section 9A of this Act.

SECTION _____. Section 8, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. (a) The commission shall establish a real estate recovery fund which shall be set apart and maintained by the commission as provided in this section. The fund shall be used in the manner provided in this section for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed real estate broker or salesman, a duly registered person under Section 9A of this Act, or by an unlicensed employee or agent of a broker or salesman, provided the registrant, broker, or salesman was registered or licensed by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the registrant, broker, or salesman. The use of the fund is limited to an act that constitutes a violation of Section 15(a)(3) or (6) of this Act if the judgment debtor was at the time of the violation a licensed real estate broker or salesman. The use of the fund is limited to an act that constitutes a violation of Section 9A(c)(1) of this Act if the judgment debtor was at the time of the violation registered under Section 9A of this Act.

(b) On application for an original license pursuant to this Act, the applicant shall pay, in addition to his original license application fee, a fee of \$10 which shall be deposited in the real estate recovery fund. On application for an original registration under Section 9A of this Act and for each renewal of such registration, the registrant shall pay, in addition to the registrant's original application fee or renewal fee, a fee of \$50, which shall be deposited in the real estate recovery fund.

(c) If on December 31 of any year the balance remaining in the real estate recovery fund is less than \$1 million, each real estate broker and each real estate salesman, on the next renewal of his license, shall pay, in addition to his license renewal fee, a fee of \$10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to \$1.7 million, whichever is less. If on December 31 of any year the balance remaining in the real estate recovery fund is more than \$3.5 million or more than the total amount of claims paid from the fund during the previous four fiscal years, whichever is greater, the amount of money in excess of the greater amount shall be transferred to the general revenue fund.

(d) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the registrant, real estate broker, or real estate salesman shall notify the commission in writing to this effect at the time of the commencement of the action.

(c) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a registrant, real estate broker, or real estate salesman, on the grounds described in Subsection (a) of this section that occurred on or after May 19, 1975, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission, and to the judgment debtor, may apply to the court for an order directing payment out of the real estate recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Subsection (n) of this section.

(f) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Subsection (a) of this section;

(2) he is not a spouse of the debtor, or the personal representative of the spouse; and he is not a registrant under Section 9A of this Act or a real estate broker or salesman, as defined by this Act, who is seeking to recover a real estate commission or any compensation in the transaction or transactions for which the application for payment is made;

(3) he has obtained a judgment under Subsection (c) of this section that is not subject to a stay or discharge in bankruptcy, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(4) based on the best available information, the judgment debtor lacks sufficient attachable assets in this state or any other state to satisfy the judgment; and

(5) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(g) A recovery on the judgment against a single defendant made before payment from the recovery fund must be applied by the creditor first to actual damages.

(h) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Subsection (f) of this section and that the aggrieved person has satisfied all of the requirements of Subsections (c) and (f) of this section. The commission may relitigate any issue material and relevant in the hearing on the application that was determined in the underlying action on which the judgment in favor of the applicant was based. If the court finds that the aggregate amount of claims against a registrant, real estate broker, or salesman exceeds the limitations contained in this section, the court shall reduce proportionately the amount it finds payable on the claim.

(i) A license or registration granted under the provisions of this Act may be revoked by the commission on proof that the commission has made

a payment from the real estate recovery fund of any amount toward satisfaction of a judgment against a registrant under Section 9A of this Act or a licensed real estate broker or salesman. The commission may probate an order revoking a license. No registrant, broker, or salesman is eligible to receive a new registration or license until he has repaid in full, plus interest at the current legal rate, the amount paid from the real estate recovery fund on his account.

(j) The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the real estate recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this section.

(k) When the real estate commission receives notice of entry of a final judgment and a hearing is scheduled under Subsection (h) of this section, the commission may notify the Attorney General of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate. In taking such action the real estate commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to insure compliance with the requirements for recovery under this section.

(l) When, on the order of the court, the commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

(m) The failure of an aggrieved person to comply with the provisions of this section relating to the real estate recovery fund shall constitute a waiver of any rights under this section.

(n) Notwithstanding any other provision, payments from the real estate recovery fund are subject to the following conditions and limitations:

(1) payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Subsection (e) of this section, and in the manner prescribed by this section;

(2) payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to \$50,000 regardless of the number of claimants; and

(3) payments for claims based on judgments against any one licensed real estate broker, licensed real estate [or] salesman, or registrant under Section 9A of this Act may not exceed in the aggregate \$100,000 until the fund has been reimbursed by the licensee or registrant for all amounts paid.

(o) Nothing contained in this section shall limit the authority of the commission to take disciplinary action against a registrant or licensee for

a violation of this Act or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by a registrant or licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act.

(p) Any person receiving payment out of the real estate recovery fund pursuant to Section 8 of this Act shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in Subsection (n) of this section.

(q) A registrant, broker, or salesman registered or licensed under this Act shall notify consumers and service recipients of the availability of the real estate recovery fund established under this section for reimbursing certain aggrieved persons. The notice must include the name, mailing address, and telephone number of the commission and any other information required by commission rule. The notification may be provided with the notice required by Section 5(q) of this Act or:

- (1) on a written contract for the services of a registrant, broker, or salesman;
- (2) on a brochure distributed by a registrant, broker, or salesman;
- (3) on a sign prominently displayed in the place of business of a registrant, salesman, or broker; or
- (4) in a bill or receipt for service provided by a registrant, broker, or salesman.

SECTION _____. Section 9, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. (a) When an applicant has satisfactorily met all requirements and conditions of this Act, a license or certificate of registration shall be issued which may remain in force and effect so long as the holder of the certificate of registration or license remains in compliance with the obligations of this Act, which include payment of the renewal fee as provided in Section 11 of this Act. Each active salesman license issued shall be delivered or mailed to the broker with whom the salesman is associated and shall be kept under his custody and control.

(b) An applicant is not permitted to engage in the real estate business either as a broker or salesman until a license evidencing his authority to engage in the real estate business has been received. A person may not engage in the business of selling, buying, leasing, or transferring an easement or right-of-way for another for compensation until the person is licensed or registered under this Act.

(c) The commission by rule may adopt a system under which licenses and registrations expire on various dates during the year. Dates for payment of the renewal fee shall be adjusted accordingly. For the year in which the renewal date is changed, renewal fees payable shall be prorated on a monthly basis so each licensee or registrant shall pay only that portion of the fee which is allocable to the number of months during which the license or registration is valid. On renewal of the license or registration on the new renewal date, the total renewal fee is payable.

(d) Any other provision of this Act notwithstanding, the commission may issue licenses and registrations valid for a period not to exceed 24 months

and may charge and collect renewal fees for such period; provided, however, that such renewal fees shall not, calculated on an annual basis, exceed the amounts established in Section 11 of this Act, and further provided that the educational conditions for renewal established in Subsection (c) of Section 7 of this Act shall not be waived by the commission.

(e) The commission shall require, in any application for a broker or salesman license or a renewal of a broker or salesman license, the applicant to disclose whether the applicant has entered a plea of guilty or nolo contendere to, been found guilty of, or been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction or suspending the imposition of sentence.

SECTION _____. The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding Section 9A to read as follows:

Sec. 9A. (a) A person may not sell, buy, lease, or transfer an easement or right-of-way for another for compensation, or with the intention or in the expectation or on the promise of receiving a collecting compensation, for use in connection with telecommunication, utility, railroad, or pipeline service unless the person is:

(1) licensed as a real estate broker or real estate salesman under this Act;

(2) exempt from this Act for the purpose of selling, buying, leasing, or transferring an easement or right-of-way; or

(3) registered with the commission under this section.

(b) The commission shall maintain a registry of persons who are registered under this section.

(c) The commission shall investigate a signed complaint received by the commission that relates to the acts of a person registered or required to be registered under this section. The commission may revoke or suspend the registration of a registrant under this section who:

(1) engaged in dishonest dealings, fraud, deceptive acts, misrepresentations, bad faith, unlawful discrimination, or untrustworthiness;

(2) failed within a reasonable time to make good a check to the commission after the commission has mailed a request for payment to the registrant's last known address as reflected in the commission records;

(3) failed to provide to a party in a transaction a written notice promulgated by the commission that is to be given before the party is obligated to sell, buy, lease, or transfer a right-of-way or easement and that contains the name of the registrant, the certificate number of the registrant, the name of the person the registrant represents, a statement advising the party that the party may seek representation from a lawyer or real estate broker in the transaction, and a statement generally advising the party that the right-of-way or easement may affect the value of the property; or

(4) disregarded or violated a provision of this Act or a rule of the commission relating to registrants under this section.

(d) The commission may adopt rules to administer and enforce this section.

SECTION ____ Subsection (a), Section 10, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If the commission declines or fails to register or license an applicant, it shall immediately give written notice of the refusal to the applicant. Before the applicant may appeal to a district court as provided in Section 18 of this Act, he must file within 10 days after the receipt of the notice an appeal from the ruling, requesting a time and place for a hearing before the commission. The commission shall set a time and place for the hearing within 30 days from the receipt of the appeal, giving 10 days' notice of the hearing to the applicant. The time of the hearing may be continued from time to time with the consent of the applicant. Following the hearing, the commission shall enter an order which is, in its opinion, appropriate in the matter concerned.

SECTION ____ Section 11, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. (a) The commission shall charge and collect the following fees:

(1) a fee not to exceed \$100 for the filing of an original application for a real estate broker license;

(2) a fee not to exceed \$100 for annual renewal of a real estate broker license;

(3) a fee not to exceed \$50 for the filing of an original application for a real estate salesman license;

(4) a fee not to exceed \$50 for annual renewal of a real estate salesman license;

(5) a fee not to exceed \$25 for an application for a license examination;

(6) a fee not to exceed \$20 for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed \$20 for filing a request for a license or certificate of registration for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(8) a fee not to exceed \$20 for filing a request to replace a license or certificate of registration lost or destroyed;

(9) a fee not to exceed \$400 for filing an application for approval of an education program under Section 7(f) of this Act;

(10) a fee not to exceed \$200 a year for operation of an education program under Section 7(f) of this Act;

(11) a fee of \$15 for transcript evaluation;

(12) a fee not to exceed \$10 for preparing a license or registration history;

(13) a fee not to exceed \$50 for the filing of an application for a moral character determination;

(14) an annual fee of \$20 from each real estate broker and each registrant under Section 9A of this Act to be transmitted to Texas A&M University for the Texas Real Estate Research Center as provided by Section 5(m) of this Act; ~~and~~

(15) an annual fee of \$17.50 from each real estate salesman to be transmitted to Texas A&M University for the Texas Real Estate Research Center as provided by Section 5(m) of this Act;

(16) an annual fee of \$80 from each registrant under Section 9A of this Act; and

(17) any fee authorized under Section 8 of this Act for the real estate recovery fund.

SECTION _____. Section 12, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The certificate of registration of a registrant under Section 9A of this Act shall at all times be prominently displayed in the registrant's place of business. Within 10 days after a move from a previously designated address, the registrant shall notify the commission of the move and obtain a new certificate of registration reflecting the new location.

SECTION _____. Subsections (a) and (b), Section 16, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A license or registration granted under the provisions of this Act shall be suspended or revoked by the commission on proof that the licensee or registrant, not being licensed and authorized to practice law in this state, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relationship as a licensee, drew a deed, note, deed of trust, will, or other written instrument that may transfer or anyway affect the title to or an interest in land, except as provided in the subsections below, or advised or counseled a person as to the validity or legal sufficiency of an instrument or as to the validity of title to real estate.

(b) Notwithstanding the provisions of this Act or any other law, the completion of contract forms which bind the sale, exchange, option, lease, or rental of any interest in real property by a registrant under Section 9A of this Act, a real estate broker, or a real estate salesman incident to the performance of the acts of a broker as defined by this Act ~~[article]~~ does not constitute the unauthorized or illegal practice of law in this state, provided the forms have been promulgated for use by the commission for the particular kind of transaction involved, or the forms have been prepared by an attorney at law licensed by this state and approved by said attorney for the particular kind of transaction involved, or the forms have been prepared by the property owner or prepared by an attorney and required by the property owner.

SECTION _____. Subsection (a), Section 19, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person acting as a real estate broker or real estate salesman without first obtaining a license or a person required to register under Section 9A of this Act who sells, purchases, leases, or transfers a right-of-way or easement without first obtaining a certificate of registration under Section 9A of this Act is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a person other than an individual ~~[corporation or a limited liability company]~~, shall be punishable by a fine of not less than \$1,000 nor more than \$2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less

than \$500 nor more than \$1,000, or by imprisonment for a term not to exceed two years, or both; and if a person other than an individual [~~corporation or a limited liability company~~], shall be punishable by a fine of not less than \$2,000 nor more than \$5,000.

SECTION ____ (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Sections 3, 7, 8, and 13 of this Act take effect January 1, 1998.

SECTION ____ Transactions included within the provisions of Section 9A, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by this Act, shall be governed by this Act from and after its effective date. Transactions executed prior to that date are validated in all respects with regard to compliance with the licensing provisions of Section 1, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes).

2. Renumber appropriate sections accordingly.

Amendment No. 8

Amend **CSSB 1100** by adding a new SECTION 9 to the bill to read as follows and renumbering the following SECTIONS accordingly:

"SECTION 9. Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) is amended by adding a new subsection (r) to read as follows:

(r) The commission shall adopt rules that require licensees under this section to use the forms prepared by the commission."

The amendments were read.

Senator Wentworth moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1100** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Cain, Carona, Gallegos, and Patterson.

SENATE BILL 1563 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1563** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1563** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the objection to certain assigned judges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (w), Section 25.0022, Government Code, is amended to read as follows:

(w) Chapter 74 and Subchapter I, Chapter 75, do ~~[does]~~ not apply to the assignment under this section of statutory probate court judges.

SECTION 2. Chapter 75, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. GENERAL PROVISIONS

Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN APPELLATE COURT. (a) When a judge or justice is assigned to an appellate court under this chapter or Chapter 74, the person who assigns the judge or justice shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge or justice.

(b) A judge or justice assigned to an appellate court may not hear a civil case if a party to the case files a timely objection to the assignment of the judge or justice. Except as provided by Subsection (d), each party to the case is entitled to only one objection under this section for that case through all levels of appeal.

(c) An objection under this section must be filed before the first hearing in which the assigned judge or justice is assigned to sit.

(d) A former judge or justice who was not a retired judge or justice may not sit in an appellate case if either party objects to the judge or justice.

(e) A party may not object under this section and in the same case object under Section 74.053.

SECTION 3. This Act takes effect September 1, 1997, and applies only to an objection to a judge or justice assigned on or after that date. An objection to a judge or justice assigned before the effective date of this Act is governed by the law in effect at the time the assignment was made, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Wentworth moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1563** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Cain, Duncan, Luna, and Ogden.

SENATE BILL 1437 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1437** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 on Third Reading

Amend **SB 1437** on third reading by striking SECTION 3 of the bill and substituting the following:

SECTION 3. Section 11.26, Tax Code, is amended by amending Subsection (a) and adding Subsections (g), (h), and (i) to read as follows:

(a) Except as provided by Subsection (b) ~~[of this section]~~, a school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years or older above the amount of the tax it imposed in the first year the individual qualified that residence homestead for the exemption provided by ~~[Subsection (c) of]~~ Section 11.13(c) for an individual 65 years of age or older ~~[11.13 of this code]~~. If the individual qualified that residence homestead for the exemption after the beginning of that first year, the maximum amount of taxes that a school district may impose on that residence homestead in a subsequent year is determined as provided by Section 26.112 as if the individual qualified that residence homestead for the exemption for that entire first year, except as provided by Subsection (b). If the individual qualified that residence homestead for the exemption after the beginning of that first year and the residence homestead remains eligible for the exemption for the next year, and if the school district taxes imposed on the residence homestead in the next year are less than the amount of taxes imposed in that first year, a school district may not subsequently increase the total annual amount of ad valorem taxes it imposes on the residence homestead above the amount it imposed in the year immediately following the first year for which the individual qualified that residence homestead for the exemption, except as provided by Subsection (b). The tax officials shall continue to appraise the property and to calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the tax imposed in the first year the individual qualified the residence homestead for the exemption.

(g) If an individual who qualifies for the exemption provided by Section 11.13(c) for an individual 65 years of age or older dies, the surviving spouse of the individual is entitled to the limitation applicable to the residence homestead of the individual if:

(1) the surviving spouse is 55 years of age or older when the individual dies; and

(2) the residence homestead of the individual:

(A) is the residence homestead of the surviving spouse on the date that the individual dies; and

(B) remains the residence homestead of the surviving spouse.

(h) If an individual who qualifies for an exemption provided by Section 11.13(c) for an individual 65 years of age or older dies in the first year

in which the individual qualified for the exemption and the individual first qualified for the exemption after the beginning of that year, except as provided by Subsection (i), the amount to which the surviving spouse's school district taxes are limited under Subsection (g) is the amount of school district taxes imposed on the residence homestead in that year calculated under Section 26.112 as if the individual qualifying for the exemption had lived for the entire year.

(i) If in the first tax year after the year in which an individual dies in the circumstances described by Subsection (h) the amount of school district taxes imposed on the residence homestead of the surviving spouse is less than the amount of school district taxes imposed in the preceding year as limited by Subsection (h), in a subsequent tax year the surviving spouse's school district taxes on that residence homestead are limited to the amount of taxes imposed by the district in that first tax year after the year in which the individual dies.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to SB 1437.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Senator Carona offered the following resolutions:

SENATE RESOLUTION 775

WHEREAS, The Senate of the State of Texas takes pleasure in recognizing Charles "Slick" Neal for his many years of outstanding service to the Texas Senate; and

WHEREAS, Slick Neal is well known for his notable contributions in the performance of his duties in the senators' lounge; and

WHEREAS, A dedicated and talented employee, he is noted for his dependability and his organizational skills; and

WHEREAS, The care and maintenance of the State Capitol and its extension require a great amount of work, and Slick Neal is one of the men who is entrusted to handle these responsibilities; and

WHEREAS, In tribute to his 14 years and nine months of loyalty and hard work, members of the Texas Senate requested that an official Resolution be prepared to honor him; and

WHEREAS, The Texas Senate has greatly benefitted from the efforts, generous spirit, and talent of this accomplished citizen; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby commend Charles "Slick" Neal for his invaluable contributions to the welfare of Texas state legislators and extend best wishes to him for the future; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of the high regard of the Texas Senate.

The resolution was again read.

SENATE RESOLUTION 776

WHEREAS, The members of the Texas Senate are pleased to extend congratulations to Jimmy Gooden for his exceptional work over the past 16 years and five months as a member of the custodial staff in the State Capitol; and

WHEREAS, A dedicated employee, Jimmy has earned the position of Porters Building Custodian II and is responsible for maintaining the senators' lounge in excellent condition; and

WHEREAS, Quietly and effectively, Jimmy Gooden has carried out his duties, and his efficiency and cheerfulness throughout the hectic pace of each legislative session is deeply appreciated by each senate member; and

WHEREAS, He has earned the respect of all the senators for his diligence and ability in the performance of his varied responsibilities; and

WHEREAS, The preservation of our State Capitol is of greatest importance, and the monumental task falls on those who are often unnoticed by casual visitors; their loyalty and devotion are paramount in keeping the historic old building at its best at all times for the people of Texas, who come to admire their seat of government; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby commend Jimmy Gooden for his special contributions to the citizens of Texas and express sincere gratitude to him for his many years of faithful service; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as a token of the esteem of the Texas Senate.

The resolution was again read.

SR 775 and SR 776 were previously adopted on Monday, May 19, 1997. The names of the Lieutenant Governor and Senators were added to the resolutions as signers thereof.

PRESENTATION

Senator Carona was recognized and presented Jimmy Gooden and Charles "Slick" Neal with an enrolled framed copy of their respective resolutions.

The Senate congratulated Mr. Gooden and Mr. Neal.

SENATE BILL 1831 WITH HOUSE AMENDMENT

Senator Cain called SB 1831 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend SB 1831 as follows:

(1) On page 3, line 7, following Section 1 of the bill, insert the following new section and renumber the subsequent sections appropriately:

SECTION 2. Sec. 438.034, Health and Safety Code, is amended to read as follows:

Sec. 438.034. **EMPLOYEE CLEANLINESS.** A person handling food or unsealed food containers shall:

- (1) maintain personal cleanliness;
- (2) wear clean outer garments;
- (3) keep the person's hands clean; and
- (4) either (A) wash the person's hands and exposed portions of their arms with soap and water before starting work, during work as often as necessary to avoid cross-contaminating food and to maintain cleanliness, after smoking, eating, and each visit to the toilet or (B) avoid bare-hand contact with exposed food by use of gloves or utensils and hand wash after smoking, eating, and each visit to the toilet.

The amendment was read.

On motion of Senator Cain, the Senate concurred in the House amendment to **SB 1831** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 823 ADOPTED

Senator Cain called from the President's table the Conference Committee Report on **SB 823**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Cain, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 1292 WITH HOUSE AMENDMENT

Senator Cain called **SB 1292** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1292** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the licensing of agents for the sale of credit insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 21.07, Insurance Code, is amended by adding Section 21 to read as follows:

Sec. 21. CREDIT INSURANCE AGENTS. (a) In this section:

(1) "Agent" means a person or corporation licensed to sell credit insurance in accordance with this article and as specifically provided by this section.

(2) "Credit insurance" includes:

(A) credit life insurance;

(B) credit accident and health insurance;

(C) credit property insurance; and

(D) credit involuntary unemployment insurance.

(3) "Credit property insurance" means insurance:

(A) providing coverage (i) on personal property used as collateral for securing a personal or consumer loan, or (ii) on personal property under an installment sales agreement or through a consumer credit transaction; and

(B) purchased in connection or in relation to such personal or consumer loan, installment sale, or consumer credit transaction; but

(C) shall not include any insurance which provides theft, collision, liability, property damage or comprehensive, insurance coverage on any automobile, motorized aircraft, motorcycle, truck, truck-tractor, traction engine, or any other self-propelled vehicle which is designed primarily for operation in the air or on highways, roadways, waterways or the sea and its operating equipment or is necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of any of the above vehicles and crafts; provided, however, such excluded insurance does not include single interest coverages on any of the above vehicles and crafts that insures the interest of the creditor in the same as collateral for a loan.

(b) On appointment by the insurance company, an agent may act as the agent of any company authorized to engage in the business of insurance under this code in the sale of any type of credit insurance that the company is authorized to write. The authority conferred under this section is in addition to the authority conferred under Sections 3(a) and (b) of this article and specifically permits the sale of both individual and group credit insurance.

(c) The department shall issue a credit insurance agent license to a person or corporation that applies for that license on receipt of a complete application in the form prescribed by the department and evidence satisfactory to the department of appointment of the agent by an insurance company authorized to engage in the business of insurance in this state.

(d) A credit insurance agent is not required to comply with any examination or continuing education requirement imposed under this article to obtain or renew a license issued under this section.

(e) The department shall stamp the face of a license issued under this section with the words "CREDIT INSURANCE ONLY."

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Cain moved to concur in the House amendment to **SB 1292**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 907

Senator Shapiro called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 907** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 907** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Patterson, Nixon, Fraser, and Ratliff.

SENATE BILL 897 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 897** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 897** in SECTION 3, Subsection (c) of the bill, in amended Section 2170.005, Government Code, on page 3 of the bill, at the beginning of line 11, by striking the word "terms" and inserting the words "procedures and rules".

The amendment was read.

On motion of Senator Shapleigh, the Senate concurred in the House amendment to **SB 897** by a viva voce vote.

SENATE BILL 1395 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 1395** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1395** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the preparation of a county budget in certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 111.005, Local Government Code, is amended to read as follows:

Sec. 111.005. INFORMATION FURNISHED BY COUNTY OFFICERS.

(a) In preparing the budget, the county judge may require any county officer

to furnish existing information necessary for the judge to properly prepare the budget.

(b) If a county officer fails to provide the information as required by the county judge, the county judge may request the commissioners court to issue an order:

(1) directing the county officer to produce the required information; and

(2) prescribing the form in which the county officer must produce the information.

SECTION 2. Subchapter A, Chapter 111, Local Government Code, is amended by adding Sections 111.0105, 111.0106, and 111.0107 to read as follows:

Sec. 111.0105. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Sec. 111.0106. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Sec. 111.0107. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

SECTION 3. Section 111.041, Local Government Code, is amended to read as follows:

Sec. 111.041. EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER [OF BUDGET SURPLUS]. (a) The commissioners court may spend county funds only in strict compliance with the budget except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk, and the clerk shall attach the copy to the original budget.

(c) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure. [On proper application, the commissioners court may transfer an existing budget surplus during the fiscal year to a budget of a similar kind and fund. However, the transfer may not increase the total of the budget.]

SECTION 4. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.0415 to read as follows:

Sec. 111.0415. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

SECTION 5. Section 111.042, Local Government Code, is amended to read as follows:

Sec. 111.042. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS [ANTICIPATION WARRANTS]. If a county bond issue is submitted at an election or other authorized obligations [if anticipation warrants] are to be issued against future revenues and a tax is to be levied for those obligations [warrants], the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations [warrants], the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

SECTION 6. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.0431 to read as follows:

Sec. 111.0431. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

SECTION 7. Section 111.070, Local Government Code, is amended to read as follows:

Sec. 111.070. EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER [OF BUDGET SURPLUS]. (a) The commissioners court may spend county funds only in strict compliance with the budget, except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk and the clerk shall attach the copy to the original budget.

(c) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure. [On proper application, the commissioners court may transfer an existing budget surplus during the fiscal

~~year to a budget of a similar kind and fund. However, the transfer may not increase the total of the budget.]~~

SECTION 8. Subchapter C, Chapter 111, Local Government Code, is amended by adding Sections 111.0705, 111.0706, 111.0707, 111.0708, and 111.0709 to read as follows:

Sec. 111.0705. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Sec. 111.0706. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Sec. 111.0707. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

Sec. 111.0708. PLEDGING REVENUE AS SECURITY FOR BONDS AND OTHER OBLIGATIONS. In preparing a county budget, a county may secure county bonds or other obligations by pledging for the term of the bonds or other obligations:

(1) any security authorized by law; or

(2) any revenue or receipts obtained by the county from the levy of a state tax if the state is required to pay the county the proceeds or receipts from the tax.

Sec. 111.0709. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend CSSB 1395 by adding a new SECTION to the bill (on page 6, between lines 22 and 23, house committee report version), to be numbered appropriately, to read as follows and by renumbering subsequent sections of the bill appropriately:

SECTION ____ Subchapter D, Chapter 111, Local Government Code, is amended by adding Section 111.094 to read as follows:

Sec. 111.094. ITEMIZED BUDGET. Notwithstanding any other law, the commissioners court in preparing the county budget shall determine the amount of county funds to be spent for each item listed in the county budget.

Amendment No. 2

CSSB 1395 is amended by adding a new Section 9 as follows and renumbering all following Sections appropriately.

SECTION 9. Subsection (c), Section 113.901, Local Government Code, is amended to read as follows:

(c) The commissioners court ~~[county judge]~~ of a county that has the office of county auditor may, by a written order, waive the requirement of the county judge's approval of requisitions. The order must be recorded in the minutes of the commissioners court. If the approval of the county judge is waived, all claims must be approved by the commissioners court in open court.

The amendments were read.

Senator Lindsay moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

Senator Harris offered a substitute motion to postpone further consideration of **SB 1395** with House amendments to a time certain of 9:00 p.m. Monday, June 2, 1997.

On motion of Senator Lindsay and by unanimous consent, the motion to not concur was withdrawn.

On motion of Senator Harris and by unanimous consent, the motion to postpone further consideration to a time certain of 9:00 p.m. Monday, June 2, 1997, was withdrawn.

On motion of Senator Lindsay and by unanimous consent, further consideration of **SB 1395** with House amendments was withdrawn.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1200**

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1200** have

had the same under consideration, and beg to report it back with the recommendation that it do pass.

BROWN	CUELLAR
ARMBRISTER	JUNELL
LINDSAY	KEEL
NELSON	OAKLEY
WHITMIRE	PITTS
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3540**

Senator Galloway submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3540** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLOWAY	PRICE
GALLEGOS	COUNTS
PATTERSON	EDWARDS
NIXON	McCLENDON
ARMBRISTER	ROMAN
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1419**

Senator West submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1419** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST
ARMBRISTER
BARRIENTOS
ELLIS
RATLIFF

On the part of the Senate

WILSON
DUTTON
RANGEL
SWINFORD
UHER

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to restrictions on the admission of certain persons promised or granted an athletic scholarship or similar financial assistance at a general academic teaching institution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9245 to read as follows:

Sec. 51.9245. ADMISSION OF PERSON RECEIVING ATHLETIC SCHOLARSHIP. (a) In this section, "general academic teaching institution" has the meaning assigned by Section 61.003.

(b) A general academic teaching institution may not admit an applicant who has been promised or granted an athletic scholarship, grant, or similar financial assistance conditioned on the student's participation in a sport, game, or other competition involving substantial physical ability or physical skill for or on a team organized or sponsored by the general academic teaching institution that is funded by state funds unless:

(1) if the general academic teaching institution requires a minimum high school grade point average as an admissions criterion for any entering freshman, that minimum applies to all freshmen being admitted; or

(2) for an applicant other than an entering freshman, the applicant's cumulative college-level grade point average is equal to or greater than the minimum cumulative college-level grade point average required for an undergraduate student to remain enrolled at the institution in the preceding academic year.

SECTION 2. This Act takes effect September 1, 1997, and applies only to the admission of a student on or after that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2394**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2394** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER
DUNCAN
CAIN

DELISI
RANGEL
CUELLAR
DUNNAM

On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE RESOLUTION 782

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize the eminent actor Edward Asner on the occasion of his visit to the Texas State Capitol; and

WHEREAS, A well-known actor and activist, Mr. Asner plans to film a public service announcement supporting the Austin Emergency Medical Services and the organization of the Fourth Annual CPR Saturday; and

WHEREAS, Born on November 15, 1929, in Kansas City, Missouri, he was the youngest of five children; he grew up in Kansas City, Kansas; after his graduation from high school, he enrolled at the University of Chicago, playing Thomas a Becket in "Murder in the Cathedral"; and

WHEREAS, A member of the university's drama group, Tonight at Eight-Thirty, the young Mr. Asner was directed by the young Mike Nichols in works by Yeats and Shaw; and

WHEREAS, Serving his country honorably for two years in the United States Army, he immediately returned to Chicago to join The Playwrights Theater Club following his discharge; and

WHEREAS, In two years, he followed his muse to the New York stage, where he appeared with Jack Lemmon in "Face of a Hero"; Mr. Asner appeared in the New York and American Shakespeare Festivals, and he performed in many off-Broadway productions; and

WHEREAS, After moving to Hollywood in 1961, Edward Asner began to garner more parts and become an expert in his craft; he played many parts in both comedy and drama, and he appeared in many motion pictures; and

WHEREAS, One of his most famous parts was the role of the gruff but lovable Mr. Grant on the "Mary Tyler Moore Show" that ran for seven years; his next role was in another television series, "Lou Grant," that ran for five years; he has consistently excelled in his appearances in movies, television, cable movies, television series, and cable miniseries; and

WHEREAS, Mr. Asner has been the recipient of five Golden Globes and seven Emmys; he has served as the National President of the Screen Actors Guild for two terms and was inducted into the TV Academy Hall of Fame in 1996; and

WHEREAS, Today, Edward Asner can be heard on the "Batman" animated series, "Captain Planet" cartoon series, "Spiderman," and "Gargoyles"; he divides his time between acting and working on behalf of humanitarian, political, and charitable organizations; a man such as this is truly worthy of legislative recognition; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby commend and applaud the career of Edward Asner and welcome his contributions with great enthusiasm; and, be it further

RESOLVED, That an official copy of this Resolution be prepared for the notable Mr. Asner as an expression of the high regard and esteem of the Texas Senate.

The resolution was again read.

The resolution was previously adopted on Tuesday, May 20, 1997. The names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

GUEST PRESENTED

Senator Barrientos was recognized and introduced to the Senate actor Edward Asner.

The Senate welcomed Mr. Asner.

GUESTS PRESENTED

Senator Cain was recognized and introduced to the Senate Brownie Troop No. 2272 and their leader from Greenville.

The Senate welcomed its guests.

SENATE RESOLUTION 942

Senator Armbrister offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rules 12.03 and 12.05 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 862** to consider and take action on the following specific matter:

Senate Rules 12.03(4) and 12.05(5) are suspended to permit the committee to add an appropriately numbered SECTION to the bill to read as follows:

SECTION ____ . Section 151.317(c)(2), Tax Code, is amended to read as follows:

(2) "Commercial use" means use by a person engaged in selling, warehousing, or distributing a commodity or a professional or personal service, but does not include:

(A) use by a person engaged in:

(i) processing tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(ii) exploring for, producing, or transporting, a material extracted from the earth;

(iii) agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(iv) electrical processes such as electroplating, electrolysis, and cathodic protection; [or]

(v) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or

(vi) providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades; or

(B) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale.

Explanation: The conference committee requests this suspension of limitations because of the need to assure that the use of gas and electricity in contracted activities relating to defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades is not subject to unfair taxation.

The resolution was read and was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTION 931

Senator Armbrister offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 228** to consider and take action on the following matters:

1. Senate Rule 12.03(4) is suspended to permit the committee to add a new Section 32.23(h) in SECTION 2 of the bill to read as follows:

(h) It is a defense to prosecution under Subsection (b) that the actor was a provider of advertising services who:

(1) accepted from a person acquiring the services advertising copy or artwork containing a depiction of a counterfeit mark; and

(2) had no reasonable basis to believe the mark was counterfeit.

Explanation: This change is necessary to provide a defense to prosecution and ensure that persons engaging in legitimate advertising activities are not punished under the law.

2. Senate Rule 12.03(4) is suspended to permit the committee in SECTION 2 of the bill to redesignate the existing text in Section 32.23(a)(3) as Section 32.23(a)(3)(A) and to add a new Section 32.23(a)(3)(B) to read as follows:

"(B) an identification mark that is borne on or that identifies an aircraft, aircraft part, motor vehicle, or motor vehicle part, regardless of whether the mark is registered."

Explanation: This change is necessary to properly describe the types of identification marks for which protection against counterfeiting is provided in the Act.

The resolution was read and was adopted by the following vote:
Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2088

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2088** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI	CUELLAR
CARONA	BERLANGA
GALLEGOS	COLEMAN
GALLOWAY	HAMRIC
MADLA	PICKETT
On the part of the Senate	On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2086**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2086** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
ARMBRISTER
CAIN
HARRIS
MADLA

On the part of the Senate

PALMER
D. JONES
PICKETT
TILLERY
YARBROUGH

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(Senator Brown in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 1526

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1526** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1526** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Patterson, Ratliff, Shapiro, and Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 1525

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1525** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1525** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Patterson, Ratliff, Shapiro, and Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 2001

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2001** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2001** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Moncrief, Wentworth, Duncan, and Cain.

CONFERENCE COMMITTEE ON HOUSE BILL 2437

Senator Sibley called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2437** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2437** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Sibley, Chair; Harris, Shapiro, Madla, and Lucio.

SENATE BILL 1190 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1190** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **SB 1190** by adding a new SECTION 5 and renumbering the subsequent sections.

SECTION 5. Sec. 7(c), Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The athlete agent shall strictly adhere to the specific rules of each separate institution with regard to the time, place, and duration of the athlete agent interviews. The interviews must be conducted during a period of [~~at least five but~~] not more than 30 consecutive business days and, as designated by the institution, must be conducted during the off-season [~~training~~] period before the completion of [~~for the athlete's sport that precedes~~] the athlete's final year of eligibility.

Amendment No. 2

Amend **SB 1190** SECTION 1 by adding (6) to read as follows:

(6) "Institution of higher education" means an institution of higher education or a private or independent institution of higher education as defined by Sec. 61.003(8) and (15), Texas Education Code.

The amendments were read.

On motion of Senator Armbrister, the Senate concurred in the House amendments to **SB 1190** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 1941

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1941** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1941** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Brown, Ogden, Lucio, and Nixon.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1865 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **SB 1865**. The Conference Committee Report was read and was filed with the Senate on Wednesday, May 28, 1997.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1305

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1305** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1305** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Duncan, Sibley, Barrientos, and Moncrief.

CONFERENCE COMMITTEE ON HOUSE BILL 976

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 976** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 976** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Duncan, Shapleigh, Sibley, and Moncrief.

SENATE BILL 861 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 861** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 861** as follows: Strike SECTIONS 7 and 15 and substitute the following:

SECTION 7 Section 171.106, Tax Code, is amended to read as follows:

(a) Except as provided by Subsections (c) and (d), a corporation's taxable capital is apportioned to this state to determine the amount of the tax imposed under Section 171.002(b)(1) by multiplying the corporation's taxable capital by a fraction, the numerator of which is the corporation's gross receipts from business done in this state, as determined under Section 171.103 or 171.1031, as applicable, and the denominator of which is the corporation's gross receipts from its entire business, as determined under Section 171.105.

(b) Except as provided by Subsections (c) and (d), a corporation's taxable earned surplus is apportioned to this state to determine the amount of tax imposed under Section 171.002(b)(2) by multiplying the taxable earned surplus by a fraction, the numerator of which is the corporation's gross receipts from business done in this state, as determined under Section 171.1031 or 171.1032, as applicable, and the denominator of which is the corporation's gross receipts from its entire business, as determined under Section 171.1051.

(c) A corporation's taxable capital or earned surplus that is derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, including a corporation that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company, is apportioned to this state to determine the amount of the tax imposed under Section 171.002 by multiplying the corporation's total taxable capital or earned surplus from the sale of services to or on behalf of a regulated investment company by a fraction, the numerator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by the investment company shareholders who are commercially domiciled in this state or, if the shareholders are individuals, are residents of this state and the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders. The corporation shall make a separate computation to allocate taxable capital and earned surplus. In this subsection, "regulated investment company" has the meaning assigned by Section 851 (a), Internal Revenue Code.

(d) A corporation's taxable capital or taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to this state to determine the amount of the tax imposed under Section 171.002 by multiplying the corporation's total taxable capital or earned surplus from the sale of services to an employee retirement plan company by a fraction, the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year, and the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year. The corporation shall make a separate computation to apportion taxable capital and earned surplus. In this Section, "employee retirement plan" means a plan or other arrangement that is qualified under Section 401 (a), Internal Revenue Code or satisfies the requirements of Section 403, Internal Revenue Code, or a government plan described in Section 414 (d), Internal Revenue Code. The term does not include an individual retirement account or individual retirement annuity within the meaning of Section 408, Internal Revenue Code.

(e) On or before January 1, 1998, each entity registered with State Securities Board under Art. 581, V.A.T.C.S. that provides management, administration, or investment services to an employee retirement plan, must file a report with the comptroller containing such information as the comptroller deems necessary in order to determine the fiscal impact of subsection (d) of this section. The State Securities Board and Commissioner shall cooperate with the comptroller in obtaining the information. The State Securities Commissioner shall impose the penalties as are provided in V.A.T.C.S. Art. 581 against any entity that the comptroller certifies is delinquent in the filing of the report required by this section.

(f) On or before September 1, 1998 the comptroller shall issue a report which evaluates the statewide fiscal impact of Section 171.106(d), Tax Code. If the comptroller determines that implementing Section 171.106(d) will not have a negative fiscal impact to this state, then Section 171.106(d) shall be effective for reports or returns originally due on or after January 1, 1999. If the comptroller determines that there will be a negative fiscal impact, then that subsection shall not be implemented.

(g) If this Act and another Act of the 75th Legislature, Regular Session, 1997, make the same substantive change from the current law but differ in text, this Act prevails regardless of the relative dates of enactment.

SECTION 15 (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect January 1, 1998, and applies to a report originally due on or after that date.

(b) Section 171.212, Tax Code, as added by this Act, takes effect on the earliest date that it may take effect under Section 39, Article III, Texas Constitution.

(c) Section 171.106(d), Tax Code, as added by this Act, takes effect for all reports originally due on or after the date the comptroller determines that the implementation of Section 171.106(d) will not have a negative fiscal impact on the state, but in no case earlier than January 1, 1999. If the comptroller determines that implementing Section 171.106(d), Tax Code will result in a negative fiscal impact, then that subsection has no effect.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to SB 861.

The motion prevailed by the following vote: Yeas 31, Nays 0.

SENATE BILL 360 WITH HOUSE AMENDMENTS

Senator Armbrister called SB 360 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend SB 360 on page 3, between lines 3 and 4, by adding the following new SECTION 2.07 and renumbering the subsequent sections accordingly:

"SECTION 2.07. Subchapter Y, Chapter 2306, Government Code, as added by Chapter 76, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 2306.5521 to read as follows:

Sec. 2306.5521. SUNSET PROVISION. The Texas Housing Corporation is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this subchapter expires September 1, 2003."

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **SB 360** as follows:

On page 7, line 12, (as printed in the house committee report printing) strike "2003" and substitute "2001".

Floor Amendment No. 3

Amend **SB 360** as follows:

(1) Transfer Section 2.06 of the bill to Article 1 of the bill, and in that section of the bill in the amended Section 2306.022, Government Code, strike "2003" and substitute "2001" (house committee report page 2, line 22 through page 3, line 3).

(2) Transfer Section 2.07 of the bill to Article 1 of the bill, and in that section of the bill in amended Section 2307.007, Government Code, strike "2003" and substitute "2001" (house committee report page 3, lines 4-10).

(3) Renumber the sections of the bill appropriately.

Floor Amendment No. 4

Amend **SB 360** as follows:

Delete Section 3.02 of Article 3 and renumber accordingly.

Amendment No. 5

Amend **SB 360** as follows:

(1) On page 6 of **SB 360**, between lines 7 and 8, insert the following language:

SECTION 4.03. Section 419.003, Government Code, is amended to read as follows:

Sec. 419.003. SUNSET PROVISION. The Texas Commission on Fire Protection is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 1999 [~~1997~~].

(2) In ARTICLE 6 of the bill, delete SECTION 6.01 (page 6, line 13) and insert the following:

SECTION 3.01 (a) Except as provided by subsection (b) of this section, this Act takes effect September 1, 1997.

(b) Section 4.03 of this Act takes effect only if the 75th Legislature, Regular Session, 1997, does not enact other legislation that becomes law and would amend Sec. 419.003, Government Code, to extend the sunset date of the Texas Commission on Fire Protection.

Amendment No. 6

Amend **SB 360** as follows:

(1) Add the following sections, to be numbered appropriately, in Article 4 of the bill:

SECTION _____. Section 431.023, Government Code, is amended to read as follows:

Sec. 431.023. SUNSET PROVISION. The adjutant general's department is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as

provided by that chapter, the department is abolished and this subchapter expires September 1, ~~1999~~ [1997].

SECTION _____. Section 435.003(a), Government Code, is amended to read as follows:

(a) The Texas National Guard Armory Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, ~~1999~~ [1997].

SECTION _____. Section 415.003, Government Code, is amended to read as follows:

Sec. 415.003. SUNSET PROVISION. The Commission on Law Enforcement Officer Standards and Education is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, ~~1999~~ [1997].

(2) In Article 6 of the bill, strike Section 6.01 of the bill and insert the following:

SECTION 6.01. (a) Except as provided by this section, this Act takes effect September 1, 1997.

(b) The section of this Act amending Section 431.023, Government Code, takes effect only if the 75th Legislature, Regular Session, 1997 does not enact other legislation that becomes law that amends that section to extend the sunset date of the adjutant general's department.

(c) The section of this Act amending Section 435.003(a), Government Code, takes effect only if the 75th Legislature, Regular Session, 1997, does not enact other legislation that becomes law that amends that section to extend the sunset date of the Texas National Guard Armory Board.

(d) The section of this Act amending Section 415.003, Government Code, takes effect only if the 75th Legislature, Regular Session, 1997, does not enact other legislation that becomes law that amends that section to extend the sunset date of the commission on Law Enforcement Officer Standards and Education.

Floor Amendment No. 7

Amend SB 360 in Article 4 of the bill by adding a section to the bill, to be numbered appropriately, to read as follows:

SECTION _____. Section 501.059, Government Code, is amended by adding Subsection (q) to read as follows:

(q) The Correctional Managed Health Care Advisory Committee is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this section expires September 1, 1999.

Floor Amendment No. 1 on Third Reading

Amend SB 360 on third reading as follows:

(1) In Article 4 of the bill, add a section to the article, to be numbered appropriately, to read as follows:

SECTION 4.____. Section 443.002, Government Code, is amended to read as follows:

Sec. 443.002. SUNSET PROVISION. The State Preservation Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 1999 [1997].

(2) In Article 6 of the bill, add a section to the article, to be numbered appropriately, to read as follows:

SECTION 6. __. Notwithstanding another provision of this Act, the section of this Act that amends Section 443.002, Government Code, takes effect only if the 75th Legislature, Regular Session, 1997, does not enact other legislation that becomes law and that amends Section 443.002, Government Code, to extend the sunset date of the State Preservation Board.

(3) Renumber the sections of the bill appropriately.

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 360** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Sibley, Brown, Nixon, and Truan.

SENATE BILL 1425 WITH HOUSE AMENDMENT

Senator Nelson called **SB 1425** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 on Third Reading

Amend **SB 1425**, on third reading, as follows:

(1) Strike SECTION 3 of the bill and substitute the following:

SECTION 3. The changes in law made by this Act to Subsection (a), Section 312.610, Tax Code, and the changes in law made by Subsection (d), Section 312.617, Tax Code, as added by this Act, apply only to a county development district created on or after the effective date of this Act. A county development district created before the effective date of this Act is governed by the law applicable to the district immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(2) Add the following appropriately numbered SECTION to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION __. Section 312.638, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) If the commissioners court makes a finding to add land to the district, the commissioners court shall call and hold an election for that purpose in the territory to be added to the district. The commissioners court shall order the expansion of the district only if a majority of the voters voting in the election approve the expansion of the district.

The amendment was read.

Senator Nelson moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1425** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Nelson, Chair; Brown, Cain, Galloway, and Shapiro.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1028**

Senator Barrientos submitted the following Conference Committee Report:

Austin, Texas
May 27, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1028** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BARRIENTOS

CAIN

LINDSAY

OGDEN

WENTWORTH

On the part of the Senate

HAMRIC

JACKSON

KRUSEE

MOWERY

B. TURNER

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

PERMISSION TO MEET GRANTED

On motion of Senator Armbrister and by unanimous consent, all conference committees were granted permission to meet while the Senate was in session.

SENATE BILL 1873 WITH HOUSE AMENDMENTS

Senator Bivins called **SB 1873** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1873** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to public school finance, including the abolition of the foundation school fund budget committee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The foundation school fund budget committee is abolished, and Section 42.256, Education Code, is repealed.

SECTION 2. Section 42.007, Education Code, is amended to read as follows:

Sec. 42.007. **EQUALIZED FUNDING ELEMENTS.** (a) The Legislative Budget Board shall ~~compute~~ ~~[adopt rules, subject to appropriate notice and opportunity for public comment, for the calculation]~~ for each year of a biennium ~~[of]~~ the qualified funding elements, in accordance with Subsection (c), [under Section 42.256(c)] necessary to achieve the state policy under Section 42.001.

(b) ~~Before [Not later than October 1 preceeding]~~ each regular session of the legislature, the board shall report the equalized funding elements to ~~[the foundation school fund budget committee,]~~ the commissioner[;] and the legislature.

(c) The funding elements may include:

(1) a basic allotment for the purposes of Section 42.101 that, when combined with the guaranteed yield component provided by Subchapter F, represents the cost per student of a regular education program that meets all mandates of law and regulation;

(2) adjustments designed to reflect the variation in known resource costs and costs of education beyond the control of school districts;

(3) appropriate program cost differentials and other funding elements for the programs authorized under Subchapter C, with the program funding level expressed as dollar amounts and as weights applied to the adjusted basic allotment for the appropriate year;

(4) the maximum guaranteed level of qualified state and local funds per student for the purposes of Subchapter F;

(5) the enrichment and facilities tax rate under Subchapter F;

(6) the computation of students in weighted average daily attendance under Section 42.302; and

(7) the amount to be appropriated for the school facilities assistance program under Subchapter H.

(d) The board shall conduct a study on the funding elements each biennium, as appropriate.

SECTION 3. Section 13.285, Education Code, is amended to read as follows:

Sec. 13.285. COST. The cost of incentive aid payments authorized by this subchapter shall be paid from the foundation school fund. ~~[The costs shall be considered and included by the foundation school fund budget committee in estimating the funds needed for purposes of the Foundation School Program.]~~

SECTION 4. Section 19.007(b), Education Code, is amended to read as follows:

(b) The costs for persons eligible under Section 19.005 shall be paid from the foundation school fund. ~~[Those costs shall be considered annually by the foundation school fund budget committee and included in estimating the funds needed for purposes of the Foundation School Program.]~~

SECTION 5. Section 29.256(c), Education Code, is amended to read as follows:

(c) The cost to the state shall be paid from the foundation school fund. ~~[The foundation school fund budget committee shall consider that cost in estimating the funds needed for Foundation School Program purposes.]~~

SECTION 6. Section 29.257(a), Education Code, is amended to read as follows:

(a) The legislature may appropriate money from the foundation school fund to the agency for developing and implementing community education projects. ~~[The foundation school fund budget committee shall consider the cost of community education development projects in estimating the money needed for foundation school fund purposes.]~~ The agency shall actively seek gifts, grants, or other donations for purposes related to community education development projects, unless the acceptance is prohibited by other law. Money received under this subsection shall be deposited in the account established under Subsection (b) and may be appropriated only for the purpose for which the money was given.

SECTION 7. Sections 41.002(e) and (f), Education Code, are amended to read as follows:

(e) Notwithstanding Subsection (a), for the ~~[1996-1997 and]~~ 1997-1998, ~~1998-1999, and 1999-2000~~ school years, in accordance with a determination of the commissioner, the wealth per student that a school district may have after exercising an option under Section 41.003(2) or (3) may not be less than the amount needed to maintain state and local revenue in an amount equal to state and local revenue per weighted student for maintenance and operation of the district for the 1992-1993 school year less the district's current year distribution per weighted student from the available school fund, other than amounts distributed under Chapter 31, if the district imposes an effective tax rate for maintenance and operation of the district equal to the greater of the district's current tax rate or \$1.50 on the \$100 valuation of taxable property. This subsection expires September 1, ~~1998~~ 2000.

(f) For purposes of Subsection [~~Subsections (d) and~~] (e), a school district's effective tax rate is determined by dividing the total amount of taxes collected by the district for the applicable school year by the quotient of the district's taxable value of property, as determined under Subchapter M, Chapter 403, Government Code, divided by 100. This subsection expires September 1, 2000 [~~1998~~].

SECTION 8. Section 41.006, Education Code, is amended to read as follows:

Sec. 41.006. RULES. (a) The commissioner may adopt rules necessary for the implementation of this chapter. The rules may provide for the commissioner to make necessary adjustments to the provisions of Chapter 42, including providing for the commissioner[, ~~with the approval of the foundation school fund budget committee,~~] to make an adjustment in the funding element established by Section 42.302, at the earliest date practicable, to the amount the commissioner believes, taking into consideration options exercised by school districts under this chapter and estimates of student enrollments, will match appropriation levels.

(b) As necessary for the effective and efficient administration of this chapter, the commissioner may modify effective dates and time periods for actions described by this chapter.

SECTION 9. Section 42.005(a), Education Code, is amended to read as follows:

(a) In this chapter, average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under Section 25.081(a) [~~and for each day approved by the commissioner for an extended year program under Section 29.082~~] divided by the minimum number of days of instruction.

SECTION 10. Section 42.101, Education Code, is amended to read as follows:

Sec. 42.101. BASIC ALLOTMENT. For each student in average daily attendance, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C, a district is entitled to an allotment of \$2,387 [~~or a greater amount adopted by the foundation school fund budget committee under Section 42.256~~]. A greater amount for any school year may be provided by appropriation.

SECTION 11. Section 42.102(b), Education Code, is amended to read as follows:

(b) The [~~foundation school fund budget committee shall determine the~~] cost of education adjustment is the cost of education index adjustment adopted by the foundation school fund budget committee and contained in Chapter 203, Title 19, Texas Administrative Code, as that chapter existed on January 1, 1997 [~~under Section 42.256~~].

SECTION 12. Section 42.155(c), Education Code, is amended to read as follows:

(c) Each district or county operating a regular transportation system is entitled to an allotment based on the daily cost per regular eligible student of

operating and maintaining the regular transportation system and the linear density of that system. In determining the cost, the commissioner shall give consideration to factors affecting the actual cost of providing these transportation services in each district or county. The average actual cost is to be computed by the commissioner and included for consideration by ~~the foundation school fund budget committee and~~ the legislature in the General Appropriations Act. The allotment per mile of approved route may not exceed the amount set by appropriation.

SECTION 13. Section 42.252(e), Education Code, is amended to read as follows:

(e) The commissioner shall hear appeals from school districts that have experienced a rapid decline in tax base used in calculating the local fund assignment, exceeding four percent of the preceding year, that is beyond the control of the board of trustees of the district. The commissioner, to the extent appropriations for that purpose are available, may adjust the district's taxable values for local fund assignment purposes for such losses in value exceeding four percent and thereby adjust the local fund assignment to reflect the local current year taxable value. The decision of the commissioner is final. An adjustment does not affect the local fund assignment of any other school district. This subsection applies to determinations by the commissioner in identifying districts with wealth per student exceeding the equalized wealth level pursuant to Section 41.004.

SECTION 14. Sections 42.253(b) and (f), Education Code, are amended to read as follows:

(b) Except as provided by this subsection, the commissioner shall base the determinations under Subsection (a) on the estimates provided to the legislature under Section 42.254, or, if the General Appropriations Act provides estimates for that purpose, on the estimates provided under that Act, for each school district for each school year. The commissioner shall reduce the entitlement of each district that has a final taxable value of property for the second year of a state fiscal biennium that is higher than the estimate under Section 42.254 or the General Appropriations Act, as applicable. A reduction under this subsection may not reduce the district's entitlement below the amount to which it is entitled at its actual taxable value of property. The sum of the reductions under this subsection may not be greater than the amount necessary to fully fund the entitlement of each district.

(f) Amounts transferred to the reserve account under Subsection (e) shall be used in the succeeding fiscal year to finance increases in allocations to school districts under Subsection (i). If the amount in the reserve account is less than the amount of the increases under Subsection (i) for the second year of a state fiscal biennium, the commissioner shall certify the amount of the difference to the Legislative Budget Board ~~[foundation school fund budget committee]~~ not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board ~~[committee]~~ shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under Subsection (h).

SECTION 15. Section 42.254(a), Education Code, is amended to read as follows:

(a) Not later than October 1 of each even-numbered year:

(1) the agency shall submit to ~~[the foundation school fund budget committee and]~~ the legislature an estimate of the tax rate and student enrollment of each school district for the following biennium; and

(2) the comptroller shall submit to ~~[the foundation school fund budget committee and]~~ the legislature an estimate of the total taxable value of all property in the state as determined under Subchapter M, Chapter 403, Government Code, for the following biennium.

SECTION 16. Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

$$\text{GYA} = (\text{GL} \times \text{WADA} \times \text{DTR} \times 100) - \text{LR}$$

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is \$21 [~~\$20.55~~] or a greater amount for any year provided by appropriation ~~[or a greater amount adopted by the foundation school fund budget committee under Section 42.256(d)]~~;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment and facilities tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, divided by 100.

SECTION 17. Section 42.303, Education Code, is amended to read as follows:

Sec. 42.303. LIMITATION ON ENRICHMENT AND FACILITIES TAX RATE. The district enrichment and facilities tax rate ("DTR") under Section 42.302 may not exceed \$0.64 per \$100 of valuation, or a greater amount for any year provided by appropriation ~~[adopted by the foundation school fund budget committee under Section 42.256(d)]~~.

SECTION 18. Section 45.003(e), Education Code, is amended to read as follows:

(e) Before issuing bonds, a district must demonstrate to the attorney general with respect to the proposed issuance that the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed \$0.50 per \$100 of valuation. A district may not adopt a tax rate to pay the principal of and interest on the bonds that exceeds the rate stated in the documents filed with the attorney general under this subsection except as necessary to compensate for a decline in the taxable value of property or in state aid that results in a value of property or state aid below that on which the rate stated in the documents filed under this subsection is based.

SECTION 19. Section 45.105(c), Education Code, is amended to read as follows:

(c) Local school funds from district taxes, tuition fees of students not entitled to a free education, ~~[and] other local sources, and state funds not designated for a specific purpose~~ may be used for the purposes listed for state and county available funds and for purchasing appliances and supplies, paying insurance premiums, paying janitors and other employees, buying school sites, buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase, and ~~[paying]~~ for other purposes [goods and services] necessary in the conduct of the public schools determined by the board of trustees. The accounts and vouchers for county districts must be approved by the county superintendent. If the state available school fund in any municipality or district is sufficient to maintain the schools in any year for at least eight months and leave a surplus, the surplus may be spent for the purposes listed in this subsection.

SECTION 20. Section 74.066(b), Education Code, is amended to read as follows:

(b) State funds for the support of the special school and the Moody State School shall be paid from the foundation school fund ~~[and shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes].~~

SECTION 21. Section 322.008(b), Government Code, is amended to read as follows:

(b) ~~The [Not later than the 1994-1995 school year, the]~~ general appropriations bill may ~~[shall]~~ include for purposes of information the funding elements computed ~~[adopted]~~ by the Legislative Budget Board ~~[foundation school fund budget committee]~~ under Section 42.007 ~~[16.256(e)]~~, Education Code, excluding the values for each school district calculated under Section 42.007(c)(2), Education Code ~~[Subdivision (2) of that subsection]~~. If the funding elements are included, the ~~[The]~~ funding elements under Section 42.007(c)(3) ~~[16.256(e)(3)]~~, Education Code, shall be reported in dollar amounts per pupil.

SECTION 22. Sections 26.08(a) and (f), Tax Code, are amended to read as follows:

(a) If the governing body of a school district adopts a rate that exceeds the ~~[sum of the] district's rollback tax [effective maintenance] rate as computed as provided by Subsection (c), [the rate of \$0.08, and the district's current debt rate;]~~ the registered voters of the district at an election held for that purpose must determine whether to limit the tax rate the governing body may adopt for the current year to the school district rollback tax rate. When increased expenditure of money by a school district is necessary to respond to a disaster, including a tornado, hurricane, flood, or other calamity, but not including a drought, that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under this section to limit the tax rate the governing body may adopt for the year following the year in which the disaster occurs.

(f) In a school district that received distributions from an equalization tax imposed under former Chapter 18, Education Code, the effective rate of that tax as of the date of the county unit system's abolition is added to the district's effective maintenance and operations rate under Subsection [Subsections (a) and] (c) [of this section] in the calculation of the district's rollback tax rate.

SECTION 23. Sections 42.102(c) and 56.208(d), Education Code, are repealed.

SECTION 24. This Act takes effect September 1, 1997.

SECTION 25. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 1873** in SECTION 11 of the bill, in amended Section 42.102(b), Education Code (house committee report, page 6, line 9), by striking "January 1, 1997" and substituting "March 26, 1997".

Floor Amendment No. 2

Amend **CSSB 1873** by striking SECTION 18 of the bill (House Committee Report, page 10, line 16, through page 11, line 4) and substituting the following:

SECTION 18. Section 45.003(e), Education Code, is amended to read as follows:

(e) Before issuing bonds, a district must demonstrate to the attorney general with respect to the proposed issuance that the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed \$0.50 per \$100 of valuation. A district that demonstrates to the attorney general that the district's ability to comply with this subsection is contingent on receiving state assistance may not adopt a tax rate for a year for purposes of paying

the principal of and interest on the bonds unless the district credits to the account of the interest and sinking fund of the bonds the amount of state assistance received or to be received in that year.

Floor Amendment No. 3

Amend CSSB 1873 by inserting the following new section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION _____. Section 96.707, Education Code, is amended by adding Subsection (k) to read as follows:

(k) For each student enrolled in the academy, the academy is entitled to allotments from the Foundation School Program under Chapter 42 as if the academy were a school district, except that the academy has a local share applied that is equivalent to the local fund assignment of the Beaumont Independent School District.

Floor Amendment No. 5

Amend CSSB 1873 as follows:

(1) On page 1, strike lines 9-15, and substitute the following:

"Sec. 42.007. EQUALIZED FUNDING ELEMENTS. (a) The Legislative Budget Board shall adopt rules, subject to appropriate notice and opportunity for public comment, for the calculation for each year of the biennium of the qualified funding elements, in accordance with Subsection (c), [under Section 42.256(c)] necessary to achieve the state policy under Section 42.001."

(2) On page 1, line 20, strike "may" and substitute "shall".

Floor Amendment No. 6

Amend CSSB 1873 by adding a new Section ____ to read as follows:

SECTION _____. SECTION 42.152, Education Code, is amended by amending Subsection (c) and adding Subsections (q) and (r) to read as follows:

(c) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, which may not exceed 15 percent, may [must] be used only in providing compensator education and accelerated instruction programs under Section 29.081 and may only be spent to improve and enhance programs and services funded under the regular education program. A district's compensatory education allotment may only be used for costs supplementary to the regular program, such as costs for program and student evaluation, instructional materials and equipment and other supplies required for quality instruction, supplemental staff expenses, salary supplements for teachers, smaller class size, and individualized instruction [, and the district must account for the expenditure of state funds by program and by campus under existing agency reporting and auditing procedures. Funds allocated under this section, other than the indirect cost allotment, shall only be expended to improve and enhance programs and services funded under the regular education program]. A home-rule school district or an open-enrollment charter school must use funds allocated under Subsection (a) to provide compensator education services but is not otherwise subject to Subchapter C, Chapter 29.

(q) The State Board of Education, with the assistance of the state auditor and the comptroller, shall develop and implement by rule a reporting and auditing system for district and campus expenditures of compensatory education funds to ensure that compensator education funds, other than the indirect cost allotment, are spent only to supplement the regular program. The commissioner, in the year following an audit of compensatory education expenditures, shall withhold from a district's foundation school fund payment an amount equal to the amount of compensator education funds the agency determines were not used in compliance with Subsection (c). The commissioner shall release to a district funds withheld under this subsection when the district provides to the commissioner a detailed plan to spend those funds in compliance with Subsection (c).

(r) Subsection (q) applies beginning with the 1998-1999 school year. For the 1997-1998 school year, a school district shall account for the expenditure of funds allocated under Subsection (a) by program and by campus under existing agency reporting and auditing procedures. The board, state auditor, and comptroller shall develop the reporting and auditing system required by Subsection (q) not later than August 1, 1998. This subsection expires September 1, 1999.

Floor Amendment No. 1 on Third Reading

Amend CSSB 1873 on third reading, in amended Section 42.152(c), Education Code, as added by Floor Amendment No. 6, by striking "salary supplements for teachers," and substituting "salary for teachers of at risk students,".

The amendments were read.

Senator Bivins moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on SB 1873 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Ratliff, Sibley, Haywood, and Fraser.

SENATE BILL 133 WITH HOUSE AMENDMENTS

Senator Bivins called SB 133 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend SB 133 by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to discipline of students in public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 37, Education Code, is amended to read as follows:

SUBCHAPTER A. ALTERNATIVE SETTINGS FOR BEHAVIOR
MANAGEMENT AND EDUCATION ACHIEVEMENT

Sec. 37.001. MISSION OF ALTERNATIVE SETTINGS. The mission of alternative settings for student behavior management and education achievement is to enable students placed in alternative settings to pursue the goals specified under Section 4.002 and by the commissioner.

Sec. 37.002. DEFINITIONS. In this subchapter:

(1) "Alternative education setting" means an education program operated by a school district or a county juvenile board for students who have violated the student code of conduct or have engaged in certain conduct specified by this subchapter.

(2) "Expulsion" means a student disciplinary action applied to a student who engages in conduct that:

(A) violates the student code of conduct; and

(B) may serve as the basis for the student's placement into a juvenile justice alternative education setting.

(3) "Parent" includes a guardian.

(4) "Removal" means a student disciplinary action initiated by a teacher who sends the student to the principal's office to maintain effective discipline in the classroom.

(5) "Suspension" means a student disciplinary action initiated by the principal or an appropriate administrator designated by the principal and applied to a student who engages in conduct that:

(A) violates the student code of conduct; and

(B) may serve as the basis for the student's placement into an in-school suspension setting or a school district alternative education setting.

Sec. 37.003. STUDENT CODE OF CONDUCT. (a) Each school district shall, with the advice of its district-level committee established under Section 11.251, adopt a student code of conduct for the district. The student code of conduct must:

(1) be posted and prominently displayed at each school campus; and

(2) specify the circumstances under which a student may be removed, suspended, or expelled.

(b) A student who violates the student code of conduct may be disciplined as provided under this subchapter.

(c) A teacher who has actual knowledge that a student has violated the student code of conduct shall file a written report with the school principal documenting the violation. A principal who has actual knowledge that a student has violated the student code of conduct shall make a written report documenting the violation. The principal shall send a copy of the report to the student's parent. A report under this subsection must be sent not later than 24 hours after the time the principal receives the report or obtains actual knowledge of the violation, as applicable.

(d) A principal who does not have actual knowledge but is informed, other than by a written report under Subsection (c), that a student has violated the student code of conduct or a teacher who is informed that a student has violated the student code of conduct shall investigate or provide for investigation of the reported violation. In the case of an investigation by a person other than the principal, a written report of the investigation shall be sent to the principal.

(e) Each school district shall annually review the student code of conduct.

(f) In this section, "principal" includes an appropriate administrator designated by the principal.

Sec. 37.004. REMOVAL BY TEACHER. (a) A teacher may remove from class a student:

(1) whose behavior in the classroom violates the student code of conduct; or

(2) whose behavior is so unruly, disruptive, or abusive that the behavior seriously interferes with the teacher's ability to maintain order in the classroom or with the ability of the student's classmates to learn.

(b) A student removed from class under Subsection (a):

(1) must be sent to the principal's office; and

(2) may not be returned to the teacher's class without the teacher's consent unless the campus review committee determines that the placement is the best or only alternative.

(c) The principal may place the student into another appropriate classroom or into another in-school setting, or, if the principal determines that the student's conduct warrants, the principal may place the student into a district alternative education setting.

(d) As soon as practicable after the student is removed from class, the principal shall give oral or written notice of the student's removal to the student's parent. If the student is to be placed into a setting other than a district alternative education setting under this section, the principal shall give written notice to the student and to the student's parent that the student's behavior could result in placement of the student into a district alternative education setting. Before the student may be placed into a district alternative education setting under this section, the principal must give written notice to the student and to the student's parent of the removal, of the behavior on which the removal is based, and of the fact that the student is to be placed into a district alternative education setting.

(e) The student may not attend or participate in a school-sponsored or school-related activity during the removal period.

Sec. 37.005. CAMPUS REVIEW COMMITTEE. (a) Each school shall establish a three-member committee to:

(1) determine placement of a student when a teacher has refused to return a student to the teacher's class; and

(2) make recommendations to the district concerning readmission of expelled students.

(b) Members of the committee shall be appointed as follows:

(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternative member; and

(2) the principal shall choose one person from the professional staff of the campus to serve as a member and may choose a student to serve as an advisory member.

(c) An advisory member may not vote in determining readmission.

(d) A teacher refusing to readmit the student may not serve as a member or alternate.

Sec. 37.006. SUSPENSION. (a) A principal or an appropriate administrator designated by the principal may suspend a student who engages in conduct that violates the student code of conduct.

(b) A student who is suspended may be placed into an in-school suspension setting or a district alternative education setting.

(c) An in-school suspension may not exceed five consecutive school days.

(d) A student may not be placed into an in-school suspension setting for more than 10 days in any one school year without a hearing as prescribed under Section 37.013.

(e) The student may not attend or participate in a school-sponsored or school-related activity during the suspension period.

Sec. 37.007. DISTRICT ALTERNATIVE EDUCATION SETTING.

(a) Each school district shall provide an alternative education setting that:

(1) is located in a setting other than a student's regular classroom;

(2) may be located on or off of a regular school campus;

(3) ensures that a student who is assigned to the alternative education setting is separated from students who are not assigned to the setting;

(4) offers an academic program that enables students to perform at grade level and offers the courses necessary for a high school student to fulfill the student's high school graduation requirements;

(5) carries out the mission under Section 37.001; and

(6) is considered a campus for purposes of Subchapters C, D, E, and G, Chapter 39, to the extent determined by the commissioner.

(b) Except as otherwise provided by this section or Section 37.010, a student shall be placed into a district alternative education setting if the student while on or within 1,000 feet of school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) engages in conduct that contains the elements of assault under Section 22.01(a)(1), Penal Code, or terroristic threat under Section 22.07, Penal Code;

(2) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(3) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(4) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.034, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code;

(5) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code; or

(6) engages in any other conduct that is punishable as a felony.

(c) Subsection (b)(2) does not apply to the possession or use of a medication by a student who is taking the medication under a physician's prescription. The school nurse or an appropriate administrator shall be notified of the prescription and shall maintain the medication and administer the medication to the student unless the student's parent has filed with the school a written authorization for the student to keep the medication on the student's person.

(d) A student shall be placed into a district alternative education setting if the student off of school property and not while attending a school-sponsored or school-related activity engages in the following conduct if the conduct is punishable as a felony of a particular degree specified or, if not specified, if the conduct is punishable as a felony of any degree:

(1) conduct that contains the elements of an offense under Title 5, Penal Code;

(2) conduct that contains the elements of the offense of robbery under Section 29.02, Penal Code;

(3) conduct that contains the elements of the offense of aggravated robbery under Section 29.03, Penal Code;

(4) conduct that contains the elements of the offense of burglary under Section 30.02, Penal Code, if the conduct is punishable as a felony of the first degree;

(5) possessing, delivering to another person, or manufacturing:

(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(6) committing a serious act or offense while under the influence of alcohol; or

(7) using, exhibiting, or possessing:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code.

(e) A district alternative education setting shall administer assessment instruments in accordance with Sections 39.023(a)-(c). Annually, the commissioner shall evaluate the performance of a district alternative education setting based primarily on comparable and required improvement standards that measure the academic progress of students toward grade level performance while attending the district alternative education setting.

(f) A district alternative education setting may provide for a student's transfer to:

- (1) a different campus;
- (2) a school-community guidance center; or
- (3) a community-based alternative school.

(g) A school district may provide a district alternative education setting with one or more districts.

(h) A student assigned to a district alternative education setting is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the setting.

(i) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed into a district alternative education setting.

(j) If a student placed into a district alternative education setting enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student seeks enrollment a copy of the placement order. The placement order shall be provided at the same time as all other records of the student are provided. The district in which the student enrolls may continue the alternative education setting placement or may allow the student to attend regular classes without completing the placement period.

(k) The board of trustees or the board's designee shall set the term for a student's placement into a district alternative education setting.

(l) The student shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student.

(m) A student placed into a district alternative education setting on or before the first anniversary of a previous placement must remain in the subsequent alternative education setting for at least two full school semesters or the equivalent period in the case of a district that does not operate on a semester system.

(n) The student may not attend or participate in a school-sponsored or school-related activity during the period of placement in the district alternative education setting.

Sec. 37.008. CONFERENCE. (a) Not later than the third working day after the date of receiving a request from the parent of a student removed from class under Section 37.004 or suspended into another classroom or into an in-school suspension setting under Section 37.006, the principal shall schedule a conference among the principal or another appropriate administrator, a parent of the student, the student, and the teacher removing the student from the class, if any. At the conference, the student is entitled to written or oral notice of the reasons for the removal or suspension and an opportunity to respond to the reasons for the removal or suspension. The student may not be returned to the classroom of the removing teacher pending the conference.

(b) Following the conference and regardless of whether the requesting parent is present, the principal may order the continued placement of the student into another classroom or into an in-school suspension setting.

(c) A decision of the principal under this section is final and may not be appealed.

Sec. 37.009. SERIOUS OR PERSISTENT MISBEHAVIOR. (a) A student may be expelled for serious or persistent misbehavior if the student:

(1) while in a district alternative education setting, continues to engage in conduct that violates the district's student code of conduct; or

(2) has been placed into a district alternative education setting more than two times in a single school year.

(b) Before a student may be expelled under this section:

(1) the student and the student's parent must be given written notice that explains that the student's behavior could result in placement into a juvenile justice alternative education setting and that identifies the conduct that the student must discontinue;

(2) a conference must be held in accordance with Section 37.008; and

(3) the student must be provided an opportunity to modify the student's behavior.

Sec. 37.010. EXPULSION. (a) A student shall be expelled if the student, while on or within 1,000 feet of school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy; or

(C) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code; or

(E) aggravated kidnapping under Section 20.04, Penal Code; or

(3) engages in conduct specified by Section 37.007(b)(2) or (3), if the conduct is punishable as a felony.

(b) A student may be expelled if the student, while on or within 1,000 feet of school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(C) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code; or

(2) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.034, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code.

(c) Subsections (b)(1)(A) and (B) do not apply to the possession or use of a medication by a student who is taking the medication under a physician's prescription. The school nurse or an appropriate administrator shall be notified of the prescription and shall maintain the medication and administer the medication to the student unless the student's parent has filed with the school a written authorization for the student to keep the medication on the student's person.

(d) A student shall be expelled if the student while on or off of school property and regardless of whether the student is attending a school-sponsored or school-related activity engages in conduct that contains the elements of any offense listed under Subsection (a) against any school district employee or student in retaliation for or as a result of the employee's employment with a school district or the student's attendance or activity at school.

(e) In accordance with federal law, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student shall be expelled for a period of at least one year, except that:

(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 8921, may modify the length of the expulsion; or

(2) the district or other local educational agency may provide services to an expelled student who is younger than 10 years of age in a district alternative education setting.

(f) Each school district shall report to the agency the number of students expelled under Subsection (e) each year, the names of the schools from which the students are expelled, and the types of weapons involved.

(g) A student who, while on or within 1,000 feet of school property or while attending a school-sponsored or school-related activity on or off of school property, engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.

(h) A school district shall inform each teacher of the conduct of a student who has engaged in conduct listed under this section. A teacher shall keep the information received in this subsection confidential. A teacher who the

district determines has intentionally violated this subsection may have the teacher's certification revoked or suspended by the State Board for Educator Certification.

(i) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section. A student who is younger than 10 years of age who engages in conduct described by this section shall be placed in a district alternative education setting under Section 37.007.

Sec. 37.011. COURT INVOLVEMENT. (a) Not later than the second working day after the date a hearing is held under Section 37.013, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student into a district alternative education setting or expelling a student and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides.

(b) If a student is expelled, the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.

(c) In a county with a population of 125,000 or less that does not participate in a juvenile justice alternative education setting, the juvenile board for the county in which the district's central administrative office is located and the board of trustees of the district shall enter into an annual memorandum of understanding concerning the juvenile probation department's role in supervising and providing other support services for students in a district alternative education setting. A court may order a student expelled under Section 37.009 or 37.010 to attend a district alternative education setting as a condition of probation unless otherwise agreed in the memorandum of understanding. If a court orders a student to attend a district alternative education setting as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order that the student attend a district alternative education setting without the district's consent unless otherwise agreed in the memorandum of understanding.

(d) A placement in a juvenile justice alternative education setting by a court order under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.

(e) In compliance with compulsory school attendance requirements under Section 25.085 and the memorandum of understanding under Subsection (c) between the school district and the juvenile board in a county that does not participate in a juvenile justice alternative education setting, an expelled student shall immediately attend an educational program as provided by law and in accordance with the memorandum of understanding from the date of expulsion. Each expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program. A school district and the juvenile board for the county in which the district's central administrative office is located shall provide for ensuring compliance with this subsection through the memorandum of understanding.

(f) If a student is expelled under Section 37.009 or 37.010, on the recommendation of the committee established under Section 37.005 or on its own initiative, a district may readmit the student while the student is completing any requirements imposed by the court. After the student has successfully completed any requirements the court imposes, including conditions of a deferred prosecution or conditions required by a prosecutor or probation department, and if the student meets the requirements for admission into public schools established by this title, a district may not refuse to admit the student, but the district may place the student into a district alternative education setting. Notwithstanding any other provision of this section, the student may not be returned to the classroom of the teacher under whose supervision the conduct occurred without the teacher's consent. The teacher may not be coerced to consent.

(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student into a district alternative education setting for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion.

(h) A person is not liable in civil damages for a referral to a juvenile court as required by this section.

Sec. 37.012. JUVENILE JUSTICE ALTERNATIVE EDUCATION SETTING. (a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education setting, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education setting. A juvenile justice alternative education setting in a county with a population of 125,000 or less:

(1) is not required to be approved by the Texas Juvenile Probation Commission; and

(2) is not subject to Subsection (c), (d), (f), or (g).

(b) If a student is expelled from school under Section 37.009 or 37.010, unless otherwise agreed to in the memorandum of understanding required under Subsection (i), the juvenile court shall:

(1) if the student is placed on probation under Section 54.04, Family Code, as a condition of probation, order the student to attend a juvenile justice alternative education setting in the county in which the student resides from the date of disposition, unless the student is placed in a post-adjudication treatment facility;

(2) if the student is placed on deferred prosecution under Section 53.03, Family Code, as a condition of the deferred prosecution, order the student to immediately attend the juvenile justice alternative education setting in the county in which the student resides for a period not to exceed six months; and

(3) consider the length of the school district's expulsion order for the student in determining the terms of the court-ordered probation or deferred prosecution.

(c) A juvenile justice alternative education setting shall adopt a student code of conduct in accordance with Section 37.003.

(d) The commissioner and the Texas Juvenile Probation Commission shall jointly establish appropriate educational goals for juvenile justice alternative education settings. A juvenile justice alternative education setting must focus on English language arts, mathematics, science, history, and self-discipline. Each school district shall consider course credit earned by a student while in a juvenile justice alternative education setting as credit earned in a district school. Each setting shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer, at minimum, a high school equivalency program. If an expelled student is performing at an academic level that would enable the student to be academically qualified to graduate on the expected date of graduation for the student's grade level, the student shall be provided with the appropriate courses to enable that student to continue to be qualified to graduate at that time. In the case of a high school student, the board or the board's designee, with the student's parent, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. If a student satisfies the requirements for graduation under Section 28.025, the school district in which the student resides shall issue a diploma to the student. Except as required under this subsection, the juvenile justice alternative education setting is not required to provide a course necessary to fulfill a student's high school graduation requirements.

(e) A juvenile justice alternative education setting may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education setting under contract with the juvenile board.

(f) A juvenile justice alternative education setting must operate and provide the curriculum required under Subsection (d) at least:

(1) seven hours each day; and

(2) 180 days each year, except as necessary to comply with Subsection (g).

(g) A juvenile justice alternative education setting shall provide an extended year program of courses for students identified as unlikely to be promoted to the next grade level. The extended year program must operate at least 224 days each year, including the days of operation required under Subsection (f). A student identified as unlikely to be promoted to the next grade level who is enrolled in a juvenile justice alternative education setting must attend the extended year program.

(h) A juvenile justice alternative education setting:

(1) is subject to a written operating policy developed by the juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment;

(2) shall comply with program and performance standards adopted by the Texas Juvenile Probation Commission in consultation with the agency; and

(3) is not subject to the requirements imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or Chapter 39.

(i) Not later than September 1 of each year, the school districts in a county with a population greater than 125,000 shall jointly enter into a memorandum of understanding with the county juvenile board unless the parties agree that each school district shall individually enter into a memorandum of understanding with the county juvenile board. A memorandum of understanding under this subsection must:

(1) outline the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education setting under this section;

(2) define the amount and condition of payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education setting on the basis of a funding level sufficient for the setting to fulfill its responsibilities under Subdivision (1) and in accordance with Section 37.014;

(3) identify those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which the parties agree a student may be placed in the juvenile justice alternative education setting;

(4) identify and require a timely placement and specify a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;

(5) establish services for the transition of expelled students to the school district before completion of the student's placement into the juvenile justice alternative education setting;

(6) establish and specify the components of a plan that provides transportation services for eligible students placed into the juvenile justice alternative education setting in accordance with Section 37.014(g); and

(7) establish a maximum capacity for the juvenile justice alternative education setting and establish a procedure to ensure each expelled student in the county is placed in an educational program.

(j) If the parties are unable to reach an agreement for adoption of the memorandum of understanding required under Subsection (i), the issues of dispute shall be referred to a binding arbitration process that uses a qualified alternate dispute resolution arbitrator. Each party must submit its final proposal to the arbitrator who shall make a decision that resolves the dispute within the parameters of the parties' proposals. Each school district and the juvenile board share equally the costs of arbitration, including any reasonable and necessary travel expenses incurred by the arbitrator, except that a school district that has failed to enter into a joint memorandum of understanding with the county juvenile board and the other school districts in the county is responsible for the entire cost of the arbitration. If the parties cannot agree on an arbitrator, the juvenile board shall select an arbitrator, the school districts shall select an arbitrator, and those two arbitrators shall select an arbitrator. The three arbitrators shall decide the issues in dispute. The Texas Juvenile Probation Commission shall, with the approval of the agency, adopt rules and

procedures governing the arbitration process. An arbitration decision issued under this subsection is enforceable in a court in the county in which the juvenile justice alternative education setting is located.

(k) Concerning the development and operation of a juvenile justice alternative education setting, a juvenile board, a county, and a commissioners court are immune from liability to the same extent as a school district and the juvenile board's or county's professional employees and volunteers are immune from liability to the same extent as a school district's professional employees and volunteers.

(l) A certified educator employed in a juvenile justice alternative education setting who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent that a qualified employee of a school district is covered. The operator of the juvenile justice alternative education setting is responsible for making any contribution that otherwise would be the legal responsibility of the school district for the person as if the person were a school district employee, and the state is responsible to the extent it would be legally responsible if the person were a school district employee.

(m) For purposes of accountability under Chapter 39 and the Foundation School Program under Chapter 42, a student enrolled in a juvenile justice alternative education setting is reported as if the student was enrolled at the student's assigned campus in the student's regularly assigned education program.

(n) In establishing the term of a student's placement into a juvenile justice alternative education setting, the term best suited to the academic and personal development of that student must be considered.

(o) A student who is progressing satisfactorily in the juvenile justice alternative education setting may choose to remain in the program with the written permission of the student's parent, despite being released from court jurisdiction.

(p) The student may not attend or participate in a school-sponsored or school-related activity during the period of assignment to the juvenile justice alternative education setting.

Sec. 37.013. HEARING. (a) Not later than the third working day after the date a student is placed into a district alternative education setting or a juvenile justice alternative education setting or placed into an in-school suspension setting under circumstances described by Section 37.006(d), the school principal shall schedule a hearing among the principal, or other appropriate administrator, a parent of the student, the teacher removing the student, if any, and the student. The principal shall notify the parent in writing concerning the hearing. The notice must include the date, time, and place of the hearing and must specify the reasons for the student's placement.

(b) At the hearing, the student is entitled to:

(1) written notice of the reasons for the removal;

(2) an explanation of the basis of the placement;

(3) explain the student's position and respond to the reasons given for the removal and the explanation of the basis of the placement; and

(4) be represented by the student's parent or another adult who may provide guidance to the student and who is not an employee of the school district.

(c) The student may not return to the regular classroom pending the hearing.

(d) If the principal makes a good-faith effort to inform the student and the student's parent of the date, time, and place of the hearing, the hearing may be held regardless of whether the student, the student's parent, or another adult representing the student attends.

(e) After the hearing, the principal or other appropriate administrator shall send a written report concerning the hearing to the board of trustees of the school district or the board's designee and to the parent of the student. The report must include the decisions and recommendations, if any, regarding the student's placement into an in-school suspension setting, a district alternative education setting, or a juvenile justice alternative education setting.

(f) A student or the student's parent may appeal the decision and recommendations to the board or the board's designee. A decision by the board or the board's designee is final and may not be appealed.

Sec. 37.014. FUNDING OF ALTERNATIVE EDUCATION SETTINGS.

(a) Funding for a student who is placed into a district's alternative education setting shall be provided in the same manner as if the student were attending the student's regularly assigned education program.

(b) In the case of funding for a student who is expelled and attending a juvenile justice alternative education setting, the school district from which the student was expelled shall transfer to the juvenile board in charge of the juvenile justice alternative education setting for the portion of the school year for which the juvenile justice alternative education setting is to provide educational services funds an amount determined by the memorandum of understanding under Section 37.012(i). That amount must be sufficient based on operation of the juvenile justice alternative education setting as described and agreed on in the memorandum of understanding and may not be less than the amount that would be attributable to the student in the student's regular education program or district alternative education setting, whichever is greater. Funds to cover the administrative costs attributable to the student shall be included in determining that amount. Unless otherwise agreed in a memorandum of understanding between the district and the county juvenile board, the district shall transfer the funds as soon as the funds are available to the district. In this subsection, "administrative costs" has the meaning assigned by Section 42.201.

(c) Any decision by an arbitrator under Section 37.012(j) concerning the amount of the funding for a student who is expelled and attending a juvenile justice alternative education setting must provide an amount sufficient based on operation of the juvenile justice alternative education setting as described and agreed on in the memorandum of understanding and may not be less than the amount that would be attributable to the student in the student's regular education program or district alternative education setting, whichever is greater. In determining the amount to be paid by a school district for an expelled student enrolled in a juvenile justice alternative education setting, the arbitrator shall consider relevant factors, including evidence of:

(1) the actual average total per student expenditure the district's alternative education setting;

(2) the expected per student cost in the juvenile justice alternative education setting as described and agreed on in the memorandum of understanding; and

(3) the costs necessary to achieve the accountability goals under this chapter.

(d) Each school district and juvenile board shall provide an arbitrator with the evidence the district or board, as applicable, has or controls that may be relevant in making a determination relating to funding. If the issue before the arbitrator concerns funding and the arbitrator has not reached a decision by September 1 of any school year, the school district shall transfer the amount of funds otherwise required under this section as an initial payment toward the amount to be determined by the arbitrator.

(e) If a student is reassigned from one juvenile justice alternative education setting to another, the school district in which the student is entitled to attend school under Section 25.001 shall assume from the district in which the student was formerly enrolled responsibility for transferring funds in the manner provided by this section and in accordance with the memorandum of understanding adopted by the school district and the juvenile board in the receiving county. If a student who has not been expelled but who is under the jurisdiction of a juvenile court has been ordered to attend the juvenile justice alternative education setting, the school district shall forward to the appropriate juvenile board the per student allotment for expelled students in the setting.

(f) Funds received under this section must be spent:

(1) on programs in alternative education settings; and

(2) for the benefit of the student on whose placement the funds are based.

(g) To the extent not otherwise provided, the school district in which a student was last enrolled before the student's placement into a juvenile justice alternative education setting shall provide transportation to and from a juvenile justice alternative education setting. The district must ensure that students attending the juvenile justice alternative education setting are transported separately from students not attending an alternative education setting.

(h) The Office of State-Federal Relations shall identify additional state or local funds to assist local juvenile probation departments conducting educational or job training programs in a juvenile justice alternative education setting and shall coordinate its efforts with the Texas Juvenile Probation Commission. The Office of State-Federal Relations shall provide an annual report to the legislature summarizing any funds provided under this subsection.

(i) In this subsection, "juvenile justice setting" means a public or private juvenile justice setting operated under the authority of a county juvenile board, including a preadjudication secure detention facility setting, a postadjudication secure correctional facility setting, and a secure or nonsecure day treatment facility setting. The term includes a boot camp

program operated under the authority of a juvenile board. If a student is placed in a juvenile justice setting that provides educational services other than a setting under Section 37.012:

(1) for Foundation School Program purposes, the student is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program; and

(2) the school district in which the student is enrolled on the date a juvenile court orders the student to be placed in the juvenile justice setting shall transfer to the public entity that provides educational services to the student in the setting, for the portion of the school year for which the entity provides educational services, funds equal to the district's average per student expenditure in alternative education settings under Section 37.007.

Sec. 37.015. STUDENTS WITH DISABILITIES. (a) Notwithstanding any other provision of this subchapter, the placement of a student with a disability who receives special education services may be made only by the student's admission, review, and dismissal committee.

(b) The placement of a student with a disability under this subchapter must be in accordance with applicable state and federal rules, regulations, and laws.

(c) In the case of a student with a disability who receives special education services and who is placed into a juvenile justice alternative education setting, the school district the student was attending at the time of the placement shall provide for the student's related services in accordance with the student's individualized education program during the term of the placement. In this subsection, "related services" has the meaning assigned by Section 29.002.

(d) Notwithstanding any other provision of this subchapter, the funding for a student with a disability who receives special education services and who is placed into an alternative education setting may not be less than the funding would be for that student in a setting other than an alternative education setting after subtracting the amount of funds a school district spends in providing related services under Subsection (c).

Sec. 37.016. EMERGENCY ALTERNATIVE PLACEMENT OR EXPULSION. (a) Notwithstanding any other provision of this subchapter, the principal or the principal's designee may order the immediate placement of a student into an alternative education setting if the principal or principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that the student's behavior seriously interferes with the maintenance of order, either in the classroom, in the operation of the school, or at a school-sponsored activity.

(b) If the principal or principal's designee reasonably believes that the immediate expulsion of a student is necessary to protect a person or property from imminent harm, this subchapter does not prevent the expulsion.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. After that notice is given, the student may be suspended under Section 37.006 or expelled under Section 37.010 with the conference or hearing appropriate to the type of placement held in accordance with this subchapter.

(d) A principal or principal's designee is not liable for civil damages for an emergency placement or expulsion under this section.

Sec. 37.017. REPORTS RELATING TO PLACEMENTS IN ALTERNATIVE EDUCATION SETTINGS. In the manner required by the commissioner, each school district shall annually report to the commissioner:

(1) for each placement into an alternative education setting under this subchapter, other than a placement for conduct under Section 37.009 or 37.010:

(A) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(B) information indicating whether the placement was based on:

(i) conduct violating the student code of conduct adopted under Section 37.003;

(ii) conduct for which a student may be removed from class under Section 37.004;

(iii) conduct for which a student may be suspended under Section 37.006;

(iv) conduct for which placement in an alternative education setting is permitted or required by Section 37.007; or

(v) conduct occurring while a student was enrolled in another district and for which placement in an alternative education setting is permitted by Section 37.007; and

(C) the number of days the student was assigned to the setting and the number of days the student attended the setting; and

(2) for each placement for conduct under Section 37.009 or 37.010:

(A) information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(B) information indicating whether the conduct is:

(i) serious or persistent misbehavior under Section 37.009;

(ii) conduct for which expulsion is required under Section 37.010; or

(iii) conduct for which expulsion is permitted under Section 37.010;

(C) the number of days the student was placed into an alternative education setting; and

(D) information indicating whether:

(i) the student was placed into a juvenile justice alternative education setting;

(ii) the student was placed into another alternative education setting; or

(iii) the student was not placed into a juvenile justice or other alternative education setting.

Sec. 37.018. COORDINATION BETWEEN SCHOOL DISTRICTS AND JUVENILE BOARDS. The board of trustees of a school district or the

board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located, or the juvenile board's designee, concerning supervision and rehabilitative services appropriate for expelled students and students assigned to alternative education programs. Matters of discussion shall include service by probation officers at the alternative education setting, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.

Sec. 37.019. COURT-RELATED CHILDREN—LIAISON OFFICERS. Each school district shall appoint at least one educator to act as liaison officer for court-related children who are enrolled in the district. The liaison officer shall provide counseling and services for each court-related child and the child's parents to establish or reestablish normal attendance and progress of the child in the school.

Sec. 37.020. REPORTS TO LOCAL LAW ENFORCEMENT; LIABILITY. (a) The principal of a public or private primary or secondary school or a person designated by the principal under Subsection (d) shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located, if the principal has reasonable grounds to believe that any of the following activities have occurred in school, on school property, or at a school-sponsored or school-related activity on or off of school property, regardless of whether the activity is investigated by school security officers:

(1) conduct that may constitute an offense listed under Section 8(c), Article 42.18, Code of Criminal Procedure;

(2) deadly conduct under Section 22.05, Penal Code;

(3) a terroristic threat under Section 22.07, Penal Code;

(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;

(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code; or

(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code.

(b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.

(c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.

(d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.

(e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.

(f) A person is not liable for civil damages for reporting in good faith as required by this section.

Sec. 37.021. REPORT OF DRUG OFFENSES; LIABILITY. A teacher, school administrator, or school employee is not liable for civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, possessing, or selling, on school property:

(1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;

(2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484, Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors; or

(4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Sec. 37.022. DESTRUCTION OF CERTAIN RECORDS. Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.

Sec. 37.023. INFORMATION FOR EDUCATORS. Each school district shall provide each teacher and administrator with a copy of the local policy relating to this subchapter.

~~[Sec. 37.001. STUDENT CODE OF CONDUCT. (a) Each school district shall, with the advice of its district-level committee established under Section 11.251, and jointly, as appropriate, with the juvenile board of each county in which the district is located, adopt a student code of conduct for the district. In addition to establishing standards for student conduct, the student code of conduct must:~~

~~[(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or alternative education program;~~

~~[(2) outline the responsibilities of each juvenile board concerning the establishment and operation of a juvenile justice alternative education program under Section 37.011;~~

~~[(3) define the conditions on payments from the district to each juvenile board;~~

~~[(4) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to an alternative education program; and~~

~~[(5) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007.~~

~~[(b) A teacher with knowledge that a student has violated the student code of conduct shall file with the school principal or the other appropriate administrator a written report, not to exceed one page, documenting the violation. The principal or the other appropriate administrator shall, not later than 24 hours after receipt of a report from a teacher, send a copy of the report to the student's parents or guardians.~~

~~[(c) Each school district shall adopt a student code of conduct as required by this section not later than September 1, 1996. This subsection expires September 1, 1997.~~

~~[Sec. 37.002. REMOVAL BY TEACHER. (a) A teacher may send a student to the principal's office to maintain effective discipline in the classroom. The principal shall respond by employing appropriate discipline management techniques consistent with the student code of conduct adopted under Section 37.001.~~

~~[(b) A teacher may remove from class a student:~~

~~[(1) who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or~~

~~[(2) whose behavior the teacher determines is so unruly, disruptive, or abusive that it seriously interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.~~

~~[(c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into an alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.~~

~~[(d) A teacher shall remove from class and send to the principal for placement in an alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.~~

~~[Sec. 37.003. PLACEMENT REVIEW COMMITTEE. (a) Each school shall establish a three-member committee to determine placement of a student when a teacher refuses the return of a student to the teacher's class and make recommendations to the district regarding readmission of expelled students. Members shall be appointed as follows:~~

~~[(1) the campus faculty shall choose two teachers to serve as members and one teacher to serve as an alternate member; and~~

~~[(2) the principal shall choose one member from the professional staff of a campus.~~

~~[(b) The teacher refusing to readmit the student may not serve on the committee.~~

~~[Sec. 37.004. PLACEMENT OF STUDENTS WITH DISABILITIES. The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee. A student with a disability who receives special education services may not be placed in alternative education programs solely for educational purposes if the student does not also meet the criteria for alternative placement in Section 37.006(a) or 37.007(a).~~

~~[Sec. 37.005. SUSPENSION. (a) The principal or other appropriate administrator may suspend a student who engages in conduct for which the student may be placed in an alternative education program under this subchapter.~~

~~[(b) A suspension under this section may not exceed three school days.~~

~~[Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT. (a) Except as provided by Section 37.007(a)(3), a student shall be removed from class and placed in an alternative education program as provided by Section 37.008 if the student engages in conduct punishable as a felony, or commits the following on school property or while attending a school-sponsored or school-related activity on or off of school property:~~

~~[(1) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code, or terroristic threat under Section 22.07, Penal Code;~~

~~[(2) sells, gives, or delivers to another person or possesses or uses or is under the influence of:~~

~~[(A) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or~~

~~[(B) a dangerous drug, as defined by Chapter 483, Health and Safety Code;~~

~~[(3) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;~~

~~[(4) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Sections 485.031 through 485.035, Health and Safety Code, or relating to volatile chemicals under Chapter 484, Health and Safety Code; or~~

~~[(5) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.~~

~~[(b) Except as provided by Section 37.007(c), a student shall be removed from class and placed in an alternative education program under Section 37.008 if the student engages in conduct that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.~~

~~[(c) The terms of a placement under this section must prohibit the student from attending or participating in a school-sponsored or school-related activity.~~

~~[Sec. 37.007. EXPULSION FOR SERIOUS OFFENSES. (a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:~~

~~[(1) uses, exhibits, or possesses:~~

~~[(A) a firearm as defined by Section 46.01(3), Penal Code;~~

~~[(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;~~

~~[(C) a club as defined by Section 46.01(1), Penal Code; or~~

~~[(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;~~

~~[(2) engages in conduct that contains the elements of the offense of:~~

~~[(A) aggravated assault under Section 22.02, Penal Code; sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;~~

~~[(B) arson under Section 28.02, Penal Code;~~

~~[(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;~~

~~[(D) indecency with a child under Section 21.11, Penal Code; or~~

~~[(E) aggravated kidnapping under Section 20.04, Penal Code; or~~

~~[(3) engages in conduct specified by Section 37.006(a)(2) or (3), if the conduct is punishable as a felony.~~

~~[(b) A student may be expelled if the student, after being placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.~~

~~[(c) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a) against any employee in retaliation for or as a result of the employee's employment with a school district.~~

~~[(d) In accordance with federal law, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:~~

~~[(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 2891, may modify the length of the expulsion in the case of an individual student; and~~

~~[(2) the district or other local educational agency may provide educational services to the expelled student in an alternative education program as provided by Section 37.008.~~

~~[(e) Each school district shall report to the agency the number of students expelled under Subsection (d) each year, the names of the schools from which the students are expelled, and the types of weapons involved.~~

~~[(f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.~~

~~[(g) A school district shall inform each teacher of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.~~

~~[Sec. 37.008. ALTERNATIVE EDUCATION PROGRAMS. (a) Each school district shall provide an alternative education program that:~~

~~[(1) is provided in a setting other than a student's regular classroom;~~
~~[(2) is located on or off of a regular school campus;~~
~~[(3) provides for the students who are assigned to the alternative education program to be separated from students who are not assigned to the program;~~

~~[(4) focuses on English language arts, mathematics, science, history, and self-discipline;~~

~~[(5) provides for students' educational and behavioral needs; and~~

~~[(6) provides supervision and counseling.~~

~~[(b) An alternative education program may provide for a student's transfer to:~~

~~[(1) a different campus;~~

~~[(2) a school-community guidance center; or~~

~~[(3) a community-based alternative school.~~

~~[(c) An off-campus alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.~~

~~[(d) A school district may provide an alternative education program jointly with one or more other districts.~~

~~[(e) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed in an alternative education program.~~

~~[(f) A student removed to an alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.~~

~~[(g) A school district shall allocate to an alternative education program the same expenditure per student attending the alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.~~

~~[(h) A school district may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in an alternative education program.~~

~~[(i) On request of a school district, a regional education service center may provide to the district information on developing an alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.~~

~~[(j) If a student placed in an alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement.~~

~~[(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007.~~

~~[Sec. 37.009. HEARING; REVIEW. (a) Not later than the third class day after the day on which a student is removed from class under Section 37.002(b) or (d), the school principal shall schedule a hearing among the principal or the principal's designee, a parent or guardian of the student, the teacher removing the student from class, and the student. The student may not be returned to the regular classroom pending the hearing. Following the hearing, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student as provided by Section 37.002 for a period consistent with the student code of conduct.~~

~~[(b) If a student's placement in an alternative education program is to extend beyond the end of the next grading period, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.~~

~~[(c) Before it may place a student in an alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:~~

~~[(1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or~~

~~[(2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.~~

~~[(d) The board or the board's designee shall set a term for a student's placement in an alternative education program under Section 37.002 or 37.006.~~

~~[(e) A student placed in an alternative education program under Section 37.002 or 37.006 shall be provided a review of the student's status by the board's designee at intervals not to exceed 120 days. At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.~~

~~[(f) Before a student may be expelled under Section 37.007, the board or the board's designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student must be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the school district. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a district court of the county in which the school district's central administrative office is located.~~

~~[(g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in an alternative education program under Section 37.002 or 37.006 or expelling the student under Section 37.007.~~

~~[(h) After a school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.~~

~~[Sec. 37.010. COURT INVOLVEMENT. (a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in an alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. Except as provided by Subsection (b), the officer may determine whether:~~

~~[(1) a petition should be filed alleging that the student is in need of supervision or has engaged in delinquent conduct; or~~

~~[(2) the student should be referred to an appropriate state agency.~~

~~[(b) If a student is expelled under Section 37.007(b), the board or its designee shall refer the student to the authorized officer of the juvenile court for appropriate proceedings under Title 3, Family Code.~~

~~[(c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district alternative education program as a condition of probation.~~

~~[(d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend an alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend an alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.~~

~~[(e) Any placement in an alternative education program by a court under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.~~

~~[(f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to admit the student, but the~~

~~district may place the student in the alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.~~

~~[(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court.~~

~~[(h) A person is not liable in civil damages for a referral to juvenile court as required by this section.~~

~~[Sec. 37.011. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. (a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:~~

~~[(1) is not required to be approved by the Texas Juvenile Probation Commission; and~~

~~[(2) is not subject to Subsection (c), (d), (f), or (g):~~

~~[(b) If a student is found to have engaged in conduct described by Section 37.007 and the student is found by a juvenile court to have engaged in delinquent conduct under Title 3, Family Code, the juvenile court shall:~~

~~[(1) require the juvenile justice alternative education program in the county in which the conduct occurred to provide educational services to the student; and~~

~~[(2) order the student to attend the program from the date of adjudication.~~

~~[(c) A juvenile justice alternative education program shall adopt a student code of conduct in accordance with Section 37.001.~~

~~[(d) A juvenile justice alternative education program must focus on English language arts, mathematics, science, history, and self-discipline. Each program shall administer assessment instruments under Subchapter B, Chapter 39, and shall offer a high school equivalency program.~~

~~[(e) A juvenile justice alternative education program may be provided in a facility owned by a school district. A school district may provide personnel and services for a juvenile justice alternative education program under a contract with the juvenile board.~~

~~[(f) A juvenile justice alternative education program must operate at least:~~

~~[(1) seven hours per day; and~~

~~[(2) 180 days per year.~~

~~[(g) A juvenile justice alternative education program shall be subject to a written operating policy developed by the local juvenile justice board and submitted to the Texas Juvenile Probation Commission for review and comment. A juvenile justice alternative education program is not subject to~~

a requirement imposed by this title, other than a reporting requirement or a requirement imposed by this chapter or by Chapter 39.

~~[(h) For purposes of accountability under Chapter 39 and the Foundation School Program, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program.~~

~~[(i) A student transferred to a juvenile justice alternative education program must participate in the program for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court. The juvenile court may not order a period of transfer under this section that exceeds the term of any probation ordered by the juvenile court.~~

~~[(j) A juvenile board in a county with a population greater than 125,000 shall establish a juvenile justice alternative education program not later than September 1, 1996. A student who engages in conduct described by Section 37.007 before the date on which a juvenile justice alternative education program for the county in which the student resides begins operation shall be expelled for a period not to exceed one year. This subsection expires September 1, 1997.~~

~~[Sec. 37.012. FUNDING OF JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS. (a) The school district in which a student is enrolled on the date a juvenile court orders the student to attend a juvenile justice alternative education program shall transfer to the juvenile board in charge of the juvenile justice alternative education program for the portion of the school year for which the juvenile justice alternative education program provides educational services funds equal to the district's average per student expenditure in alternative education programs under Section 37.008.~~

~~[(b) Funds received under this section must be expended on juvenile justice alternative education programs.~~

~~[(c) The Office of State-Federal Relations shall assist a local juvenile probation department in identifying additional state or federal funds to assist local juvenile probation departments conducting educational or job training programs within juvenile justice alternative education programs.~~

~~[Sec. 37.013. COORDINATION BETWEEN SCHOOL DISTRICTS AND JUVENILE BOARDS. The board of trustees of the school district or the board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located or the juvenile board's designee concerning supervision and rehabilitative services appropriate for expelled students and students assigned to alternative education programs. Matters for discussion shall include service by probation officers at the alternative education program site, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.~~

~~[Sec. 37.014. COURT-RELATED CHILDREN—LIAISON OFFICERS. Each school district shall appoint at least one educator to act as liaison officer for court-related children who are enrolled in the district. The liaison officer~~

shall provide counselling and services for each court-related child and the child's parents to establish or reestablish normal attendance and progress of the child in the school.

~~[Sec. 37.015. REPORTS TO LOCAL LAW ENFORCEMENT; LIABILITY. (a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:~~

~~[(1) conduct that may constitute an offense listed under Section 8(c), Article 42.18, Code of Criminal Procedure;~~

~~[(2) deadly conduct under Section 22.05, Penal Code;~~

~~[(3) a terroristic threat under Section 22.07, Penal Code;~~

~~[(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;~~

~~[(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code; or~~

~~[(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code.~~

~~[(b) A person who makes a notification under this section shall include the name and address of each student the person believes may have participated in the activity.~~

~~[(c) A notification is not required under Subsection (a) if the person reasonably believes that the activity does not constitute a criminal offense.~~

~~[(d) The principal of a public or private primary or secondary school may designate a school employee who is under the supervision of the principal to make the reports required by this section.~~

~~[(e) The person who makes the notification required under Subsection (a) shall also notify each instructional or support employee of the school who has regular contact with a student whose conduct is the subject of the notice.~~

~~[(f) A person is not liable in civil damages for reporting in good faith as required by this section.~~

~~[Sec. 37.016. REPORT OF DRUG OFFENSES; LIABILITY. A teacher, school administrator, or school employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher's, administrator's, or employee's duties, a student whom the teacher suspects of using, passing, or selling, on school property:~~

~~[(1) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code;~~

~~[(2) a dangerous drug, as defined by Chapter 483, Health and Safety Code;~~

~~[(3) an abusable glue or aerosol paint, as defined by Chapter 485, Health and Safety Code, or a volatile chemical, as listed in Chapter 484,~~

~~Health and Safety Code, if the substance is used or sold for the purpose of inhaling its fumes or vapors, or~~

~~[(4) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.~~

~~[Sec. 37.017. DESTRUCTION OF CERTAIN RECORDS. Information received by a school district under Article 15.27, Code of Criminal Procedure, may not be attached to the permanent academic file of the student who is the subject of the report. The school district shall destroy the information at the end of the school year in which the report was filed.~~

~~[Sec. 37.018. INFORMATION FOR EDUCATORS. Each school district shall provide each teacher and administrator with a copy of this subchapter and with a copy of the local policy relating to this subchapter.~~

~~[Sec. 37.019. EMERGENCY PLACEMENT OR EXPULSION. (a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in the alternative program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.~~

~~[(b) This subchapter does not prevent the principal or the principal's designee from ordering the immediate expulsion of a student if the principal or the principal's designee reasonably believes that action is necessary to protect persons or property from imminent harm.~~

~~[(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. Within a reasonable time after the emergency placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the term of the student's emergency placement or expulsion is subject to the requirements of 20 U.S.C. Section 1415(c)(3) and 34 CFR 300.513.~~

~~[(d) A principal or principal's designee is not liable in civil damages for an emergency placement under this section.]~~

SECTION 2. Section 25.001(d), Education Code, is amended to read as follows:

(d) For a person under the age of 18 years to establish a residence for the purpose of attending the public schools separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order, it must be established that the person's presence in the school district is not for the primary purpose of participation in extracurricular activities. The board of trustees shall determine whether an applicant for admission is a resident of the school district for purposes of attending the public schools and may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students. The board of trustees is not required to admit a person under this subsection if the person:

(1) has engaged in conduct or misbehavior within the preceding year that has resulted in:

(A) placement into ~~[removal to]~~ an alternative education setting ~~[program]~~; or

(B) expulsion;

(2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or

(3) has been convicted of a criminal offense and is on probation or other conditional release.

SECTION 3. Section 25.086(a), Education Code, is amended to read as follows:

(a) A child is exempt from the requirements of compulsory school attendance if the child:

(1) attends a private or parochial school that includes in its course a study of good citizenship;

(2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;

(3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;

(4) is expelled in accordance with the requirements of law and is attending an educational program or setting under Chapter 37;

(5) is at least 17 years of age and:

(A) is attending a course of instruction to prepare for the high school equivalency examination; or

(B) has received a high school diploma or high school equivalency certificate;

(6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order;

(7) is enrolled in the Texas Academy of Mathematics and Science;

(8) is enrolled in the Texas Academy of Leadership in the Humanities; or

(9) is specifically exempted under another law.

SECTION 4. Section 37.121(b), Education Code, is amended to read as follows:

(b) A school district board of trustees or an educator shall recommend placing in an alternative education setting ~~[program]~~ any student under the person's control who violates Subsection (a).

SECTION 5. Section 39.053(d), Education Code, is amended to read as follows:

(d) The report may include the following information:

- (1) student information, including total enrollment, enrollment by ethnicity, economic status, and grade groupings and retention rates;
- (2) financial information, including revenues and expenditures;
- (3) staff information, including number and type of staff by sex, ethnicity, years of experience, and highest degree held, teacher and administrator salaries, and teacher turnover;
- (4) program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and
- (5) the number of students placed in an alternative education setting [program] under Chapter 37.

SECTION 6. Section 39.075(a), Education Code, is amended to read as follows:

(a) The commissioner shall authorize special accreditation investigations to be conducted under the following circumstances:

- (1) when excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;
- (2) when excessive numbers of allowable exemptions from the required state assessment are determined;
- (3) in response to complaints submitted to the agency with respect to alleged violations of civil rights or other requirements imposed on the state by federal law or court order;
- (4) in response to established compliance reviews of the district's financial accounting practices and state and federal program requirements;
- (5) when extraordinary numbers of student placements in alternative education settings [programs], other than placements under Sections 37.007, 37.009, and 37.010 [~~37.006 and 37.007~~], are determined; or
- (6) in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code.

SECTION 7. Section 51.03(b), Family Code, is amended to read as follows:

(b) Conduct indicating a need for supervision is:

- (1) subject to Subsection (f) of this section, conduct, other than a traffic offense, that violates:
 - (A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
 - (B) the penal ordinances of any political subdivision of this state;
- (2) the unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school without the consent of his parents;
- (3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return;

(4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or second offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or second offense);

(5) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;

(6) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section ~~37.009~~ [21.3011], Education Code; or

(7) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.

SECTION 8. Section 52.041, Family Code, is amended by adding Subsections (c)-(e) to read as follows:

(c) On receipt of an expulsion notice under this section by the office or official designated by the juvenile court, a preliminary investigation shall be conducted and a determination shall be made as required by Section 53.01 as soon as practicable.

(d) The office or official designated by the juvenile court shall, on or before the second working day after the date of an action or occurrence specified under this subsection, notify the school district that expelled the child if:

(1) a determination is made under Section 53.01 that the person referred to juvenile court is not a child within the meaning of this title;

(2) a determination is made that probable cause does not exist to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision;

(3) a determination is made that deferred prosecution or formal court proceeding involving the child will not be initiated;

(4) the court or a jury has found that the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case has been dismissed with prejudice;

(5) the child has been adjudicated but a disposition was not and will not be ordered by the court; or

(6) the child's juvenile court case is pending a disposition but the child has not been ordered to attend a juvenile justice alternative education setting as a condition of release under Section 53.02 or 54.01.

(e) In a county in which a juvenile justice alternative education setting is operated, a student may not be expelled without written notification by the board of trustees of the school district from which the student is expelled or the board's designated agent to the office or official designated by the juvenile court. The notification shall be made on or before the second working day after the date of the determination of the board of trustees to expel the student. If the board of trustees fails to provide timely notice, the district shall continue to provide an educational program to the student until the notice is given.

SECTION 9. Section 53.02, Family Code, is amended by adding Subsection (e) to read as follows:

(e) In a county with a population greater than 125,000, if a child being released under this section is alleged to have engaged in delinquent conduct and is expelled under Section 37.010, Education Code, the release must be conditioned on the child attending a juvenile justice alternative education setting under Section 37.012, Education Code, pending a deferred prosecution or formal court disposition of the child's case.

SECTION 10. Section 54.01(f), Family Code, is amended to read as follows:

(f) A release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child. In a county with a population greater than 125,000, if a child being released under this section is alleged to have engaged in delinquent conduct and is expelled under Section 37.010, Education Code, the release must be conditioned on the child attending a juvenile justice alternative education setting under Section 37.012, Education Code, pending a deferred prosecution or formal court disposition of the child's case.

SECTION 11. This Act applies beginning with the 1997-1998 school year.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend CSSB 133 as follows:

On page 3, line 8, between "violation" and the "period" insert the following:

"prior to taking a disciplinary action under this chapter."

Floor Amendment No. 2

Amend CSSB 133 as follows:

On page 5, line 7, add the following sentence:

"Any service by a student under this section must be consistent with confidentiality requirements imposed by state and federal law."

Floor Amendment No. 3

Amend CSSB 133 as follows:

On page 7, line 22, strike the entire sentence, beginning with the word "the" and ending with the word "person" and substituting the following:

A district shall adopt a policy regarding the conduct, dispensing and possession of medication issued to a student under a physician's prescription which allows a student access to medication as directed by the prescription.

Floor Amendment No. 4

Amend CSSB 133 as follows:

On page 8, line 23, between the words "offense" and "while," add the following:

"as defined in the Student Code of Conduct."

Floor Amendment No. 5

Amend CSSB 133 as follows:

On page 11, between lines 21 and 22, add a new section:

(d) A conference under this section is not required if a student is expelled and provided a hearing under Section 37.013.

Floor Amendment No. 6

Amend CSSB 133 as follows:

(1) In SECTION 1 of the bill, in added Section 37.007(d), Education Code (house committee report, page 8, line 1), strike "A" and substitute "Except as otherwise provided by Section 37.010, a".

(2) In SECTION 1 of the bill, in added Section 37.010, Education Code (house committee report, page 16, between lines 3 and 4), insert the following:

(i) Notwithstanding Section 37.007, a student who engages in conduct for which a student is required to be placed into a district alternative education setting under that section and who is not required to attend school under Section 25.085 may be expelled.

(3) In SECTION 1 of the bill, in added Section 37.011(e), Education Code (house committee report, page 17, line 13), after "student", insert "who is required to attend school under Section 25.085".

(4) In SECTION 1 of the bill, in added Section 37.011(e), Education Code (house committee report, page 17, line 16), between "student" and "who", insert "who is required to attend school under Section 25.085 and".

Floor Amendment No. 7

Amend CSSB 133 as follows:

On page 20, line 6 of the bill, amend Section 37.012(d) as follows:

strike the word "history" and replace it with the words "social studies"

Floor Amendment No. 8

Amend CSSB 133 as follows:

On page 30, line 16 strike "enrolled" and insert assigned.

Floor Amendment No. 9

Amend CSSB 133 as follows:

On page 37, line 13, amend Section 37.023 by deleting the period and adding the following after the word "subchapter":

and shall provide each teacher with training and written procedures for implementing the student code of conduct as specified in Section 37.003.

Floor Amendment No. 10

Amend CSSB 133 as follows:

(1) In SECTION 1 of the bill, in added Section 37.012(a)(2), Education Code (house committee report, page 19, lines 7-8), strike "Subsection (c), (d), (f), or (g)" and substitute "Subsection (b), (c), (e), (f), (h), (j), or (l)".

(2) In SECTION 1 of the bill, strike added Section 37.012(b), Education Code (house committee report, page 19, lines 9-26) and substitute the following:

(b) An expelled student who would otherwise be enrolled in a school district located in whole or in part in a county with a population greater than 125,000 shall as soon as practicable attend the county juvenile justice alternative education setting from the date of the expulsion if:

(1) the student is considered a child under Section 51.02(2), Family Code;

(2) the student is expelled for an offense specified under Section 37.010(a), (d), or (e);

(3) the office or official designated by the juvenile court has received information from the school district under Section 37.011(a); and

(4) a disposition of the student's juvenile court case is pending.

(c) In the case of an expelled student described under Subsection (b), the juvenile court shall:

(1) if the student is placed on probation under Section 54.04, Family Code, order the student, as a condition of probation, to continue attending the juvenile justice alternative education setting in the county in which the student would otherwise be enrolled in school from the date of disposition for a period specified by the court, unless the student is placed in a post-adjudication treatment facility or program;

(2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student, as a condition of deferred prosecution, to continue attending the juvenile justice alternative education setting for a period not to exceed six months in the county in which the student would otherwise be enrolled in school; and

(3) in determining the length of the placement in the juvenile justice alternative education setting as a condition of court-ordered probation or deferred prosecution, consider the length of the school district's expulsion order for the student.

(d) If, in a county with a population greater than 125,000, a student is expelled from school under Section 37.009 or 37.010(b) or (g), or the school district receives a notice regarding an expelled student under Section 52.041(d), Family Code, the student shall attend an educational program provided by the school district. The school district may provide the program or the school district may contract with a county juvenile board, a private provider, or one or more other school districts to provide the program. The program must comply with Subsections (f), (h), and (j). If the school district contracts with another entity to provide the program, the contract must:

(1) outline the responsibilities of the entity for providing the educational program;

(2) specify the amount and conditions of payments from the school district to the entity;

(3) identify the educational records that must be transferred with a student, to the extent permitted by state and federal law;

(4) establish the circumstances and conditions under which a student may be allowed to remain in the program once the student's expulsion order has expired;

(5) establish services or programs that will allow an expelled student to make an effective transition back to the school district;

(6) establish a plan for the provision of special education services; and

(7) establish procedures for the transfer of academic credit between the program and the district.

(3) In SECTION 1 of the bill, in added Section 37.012(c), Education Code (house committee report, page 19, line 27), strike "(c)" and substitute "(e)".

(4) In SECTION 1 of the bill, in added Section 37.012(d), Education Code (house committee report, page 20, line 2), strike "(d)" and substitute "(f)".

(5) In SECTION 1 of the bill, in added Section 37.012(e), Education Code (house committee report, page 20, line 27), strike "(e)" and substitute "(g)".

(6) In SECTION 1 of the bill, in added Section 37.012(f), Education Code (house committee report, page 21, line 5), strike "(f)" and substitute "(h)".

(7) In SECTION 1 of the bill, in added Section 37.012(f), Education Code (house committee printing, page 21, line 6), strike "(d)" and substitute "(f)".

(8) In SECTION 1 of the bill, in added Section 37.012(f)(2), Education Code (house committee printing, page 21, lines 9-10), strike "except as necessary to comply with Subsection (g)".

(9) In SECTION 1 of the bill, in added Section 37.012(g), Education Code (house committee printing, page 21, line 11), strike "(g)" and substitute "(i)".

(10) In SECTION 1 of the bill, in added Section 37.012(g), Education Code (house committee printing, page 21, line 11), strike "shall" and substitute "may".

(11) In SECTION 1 of the bill, in added Section 37.012(g), Education Code (house committee printing, page 21, line 15), strike "(f)" and substitute "(h)".

(12) In SECTION 1 of the bill, in added Section 37.012(h), Education Code (house committee printing, page 21, line 19), strike "(h)" and substitute "(j)".

(13) In SECTION 1 of the bill, strike added Sections 37.012(i) and (j), Education Code (house committee report, page 22, line 2, through page 24, line 5), and substitute the following:

(k) Not later than September 1 of each year, in each county with a population greater than 125,000, each school district in the county and the county juvenile board, or a designee of a district or the board, shall jointly develop policies and procedures relating to expelled students placed into the juvenile justice alternative education setting under Subsection (b) or (c). The policies and procedures must:

(1) identify the educational records for an expelled student that must be transferred with the student, to the extent permitted by state and federal law;

(2) establish services or programs that will allow an expelled student to make an effective transition between the student's school district and the juvenile justice alternative education setting;

(3) establish procedures for the transfer of academic credit between the school district and the juvenile justice alternative education setting;

(4) establish procedures for the administration of the assessment instruments required under Subchapter B, Chapter 39; and

(5) establish procedures to implement the transportation services required under Section 37.014.

(l) A school district and the juvenile board may agree that the district may transfer to the juvenile board an amount in addition to appropriated funds received for a student attending a juvenile justice alternative education setting under Subsection (b) or (c).

(14) In SECTION 1 of the bill, in added Section 37.012(k), Education Code (house committee printing, page 24, line 6), strike "~~(k)~~" and substitute "~~(m)~~".

(15) In SECTION 1 of the bill, in added Section 37.012(l), Education Code (house committee printing, page 24, line 13), strike "~~(l)~~" and substitute "~~(n)~~".

(16) In SECTION 1 of the bill, in added Section 37.012(m), Education Code (house committee printing, page 24, line 24), strike "~~(m)~~" and substitute "~~(o)~~".

(17) In SECTION 1 of the bill, strike added Section 37.012(n), Education Code (house committee printing, page 25, lines 2-5).

(18) In SECTION 1 of the bill, in added Section 37.012(o), Education Code (house committee printing, page 25, line 6), strike "~~(o)~~" and substitute "~~(p)~~".

(19) In SECTION 1 of the bill, in added Section 37.012(o), Education Code (house committee printing, page 25, line 8), between "~~parent~~" and the comma, insert "~~and with the consent of the juvenile board~~".

(20) In SECTION 1 of the bill, in added Section 37.012(p), Education Code (house committee printing, page 25, line 10), strike "~~(p)~~" and substitute "~~(q)~~".

(21) In SECTION 1 of the bill, strike added Sections 37.014(b)-(e), Education Code (house committee report, page 27, line 3, through page 29, line 8).

(22) In SECTION 1 of the bill, in added Section 37.014(f), Education Code (house committee printing, page 29, line 9), strike "~~(f)~~" and substitute "~~(b)~~".

(23) In SECTION 1 of the bill, in added Section 37.014(g), Education Code (house committee printing, page 29, line 13), strike "~~(g) To the extent not otherwise provided, the~~" and substitute "~~(c) The~~".

(24) In SECTION 1 of the bill, at the end of added Section 37.014(g), Education Code (house committee printing, page 29, line 20), insert the following:

The juvenile court may order, or the school district and the juvenile board by agreement may provide, alternative transportation arrangements.

(25) In SECTION 1 of the bill, in added Section 37.014(h), Education Code (house committee printing, page 29, line 21), strike "~~(h)~~" and substitute "~~(d)~~".

(26) In SECTION 1 of the bill, in added Section 37.014(i), Education Code (house committee printing, page 30, line 2), strike "~~(i)~~" and substitute "~~(e)~~".

(27) In SECTION 3 of the bill, in amended Section 25.086(a)(4), Education Code (house committee report, page 60, line 3), strike "attending" and substitute "not required to attend".

(28) In SECTION 8 of the bill, in added Section 52.041(d)(4), Family Code (house committee report, page 64, line 11), following the semicolon, insert "or".

(29) In SECTION 8 of the bill, in added Section 52.041(d)(5), Family Code (house committee report, page 64, line 13), strike "; or" and substitute a period.

(30) In SECTION 8 of the bill, strike added Section 52.041(d)(6), Family Code (house committee report, page 64, lines 14-17).

(31) Strike SECTIONS 9 and 10 of the bill (house committee report, page 65, lines 1-21), and renumber the subsequent sections of the bill accordingly.

Floor Amendment No. 12

Amend CSSB 133 in SECTION 1 of the bill, in added Section 37.003(a)(2), Education Code (house committee report, page 2, line 18), between "expelled" and the period by inserting ", including a provision specifying that a student may be expelled if the student engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(2) or (3), Penal Code".

Floor Amendment No. 13

Amend CSSB 133 in SECTION 1 of the bill, in new Section 37.005(b)(1), Education Code, (page 5, line 2, House Committee Report Printing), between "shall choose" and "two teachers", by inserting "by secret ballot".

Floor Amendment No. 1 on Third Reading

Amend CSSB 133 on third reading by inserting the following appropriately numbered section and by renumbering the subsequent sections of the bill accordingly:

SECTION __. Section 12.101, Education Code, is amended to read as follows:

Sec. 12.101. AUTHORIZATION. (a) In accordance with this subchapter, the State Board of Education may grant a charter on the application of an eligible entity for an open-enrollment charter school to operate in a facility of a commercial or nonprofit entity or a school district, including a home-rule school district. In this subsection, "eligible entity" means:

(1) an institution of higher education as defined under Section 61.003;

(2) a private or independent institution of higher education as defined under Section 61.003;

(3) an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(4) a governmental entity.

(b) Except as provided by Subsection (c), the [The] State Board of Education may not grant a total of more than 20 charters for an open-enrollment charter school.

(c) In addition to charters authorized under Subsection (b), the State Board of Education may grant a total of not more than 100 charters for an open-enrollment charter school related to providing services for one or more students who are at risk of being disciplined or who are being disciplined under Subchapter A, Chapter 37. An open-enrollment charter school granted a charter under this subsection may serve one or more students in addition to a student who is at risk of being disciplined or who is being disciplined under Subchapter A, Chapter 37.

(d) If the facility to be used for an open-enrollment charter school is a school district facility, the school must be operated in the facility in accordance with the terms established by the board of trustees or other governing body of the district in an agreement governing the relationship between the school and the district.

(e) ~~(d)~~ An educator employed by a school district before the effective date of a charter for an open-enrollment charter school operated at a school district facility may not be transferred to or employed by the open-enrollment charter school over the educator's objection.

Floor Amendment No. 2 on Third Reading

Amend CSSB 133 on third reading in SECTION 1 of the bill, in added Section 37.007, Education Code (house committee report, page 9, between lines 6 and 7), by inserting a new Subsection (e) to read as follows and by relettering the subsequent subsections of added Section 37.007, Education Code, accordingly:

(e) Except as otherwise provided by Section 37.010(d), a student shall be placed into a school district alternative education setting if the student, while on or off of school property and regardless of whether the student is attending a school-sponsored or school-related activity, harms or threatens to harm a school district employee, officer, or volunteer in retaliation for, or as a result of, the employee's employment with a school district or the officer's or volunteer's service to a school district or otherwise engages in conduct that contains the elements of the offense of

retaliation under Section 36.06, Penal Code, against any school district employee, officer, or volunteer. In this subsection, "volunteer" has the meaning assigned by Section 22.053.

The amendments were read.

Senator Bivins moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on SB 133 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Ratliff, Sibley, Haywood, and Fraser.

RECESS

On motion of Senator Truan, the Senate at 1:54 p.m. recessed until 4:30 p.m. today.

AFTER RECESS

The Senate met at 4:30 p.m. and was called to order by the President.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Karen Anderson and her sons James and Frederic Anderson of Pleasanton.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Carona was recognized and introduced to the Senate Karen McCleskey and her sons Clayton and Andrew McCleskey of Richardson.

The Senate welcomed its guests.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 20

Senator Ratliff submitted the following Conference Committee Report:

Austin, Texas
May 29, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 20 have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

RATLIFF
WENTWORTH
ZAFFIRINI

THOMPSON
GLAZE
LUNA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the creation, reorganization, and operation of certain district courts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Effective September 1, 1997, Subchapter C, Chapter 24, Government Code, is amended by adding Sections 24.540 and 24.541 to read as follows:

Sec. 24.540. 395TH JUDICIAL DISTRICT (FORT BEND COUNTY).

The 395th Judicial District is composed of Fort Bend County.

Sec. 24.541. 396TH JUDICIAL DISTRICT (TARRANT COUNTY).

(a) The 396th Judicial District is composed of Tarrant County.

(b) The 396th District Court shall give preference to criminal cases.

SECTION 2. Effective January 1, 1999, Subchapter C, Chapter 24, Government Code, is amended by adding Sections 24.524, 24.538, and 24.542 through 24.552 to read as follows:

Sec. 24.524. 379TH JUDICIAL DISTRICT (BEXAR COUNTY).

(a) The 379th Judicial District is composed of Bexar County.

(b) The 379th District Court shall give preference to criminal cases.

Sec. 24.538. 393RD JUDICIAL DISTRICT (BEXAR COUNTY).

(a) The 393rd Judicial District is composed of Bexar County.

(b) The 393rd District Court shall give preference to juvenile matters.

Sec. 24.542. 397TH JUDICIAL DISTRICT (HARRIS COUNTY).

(a) The 397th Judicial District is composed of Harris County.

(b) The 397th Judicial District shall give preference to juvenile matters.

Sec. 24.543. 398TH JUDICIAL DISTRICT (GALVESTON COUNTY).

The 398th Judicial District is composed of Galveston County.

Sec. 24.544. 399TH JUDICIAL DISTRICT (TRAVIS COUNTY).

The 399th Judicial District is composed of Travis County.

Sec. 24.545. 400TH JUDICIAL DISTRICT (NUECES COUNTY).

(a) The 400th Judicial District is composed of Nueces County.

(b) The 400th District Court shall give preference to juvenile matters.

Sec. 24.546. 401ST JUDICIAL DISTRICT (TOM GREEN COUNTY).

The 401st Judicial District is composed of Tom Green County.

Sec. 24.547. 402ND JUDICIAL DISTRICT (WEBB COUNTY).

(a) The 402nd Judicial District is composed of Webb County.

(b) The 402nd District Court shall give preference to cases involving family violence, cases under the Family Code, and cases under the Health and Safety Code.

Sec. 24.548. 403RD JUDICIAL DISTRICT (FORT BEND COUNTY).

(a) The 403rd Judicial District is composed of Fort Bend County.

(b) The 403rd Judicial District shall give preference to cases under the Family Code.

Sec. 24.549. 404TH JUDICIAL DISTRICT (CAMERON COUNTY).

(a) The 404th Judicial District is composed of Cameron County.

(b) The 404th Judicial District shall give preference to juvenile matters.

Sec. 24.550. 405TH JUDICIAL DISTRICT (SMITH COUNTY).

The 405th Judicial District is composed of Smith County.

Sec. 24.551. 406TH JUDICIAL DISTRICT (BEXAR COUNTY).

(a) The 406th Judicial District is composed of Bexar County.

(b) The 406th District Court shall give preference to civil cases.

Sec. 24.552. 407TH JUDICIAL DISTRICT (BEXAR COUNTY).

(a) The 407th Judicial District is composed of Bexar County.

(b) The 407th District Court shall give preference to criminal cases.

SECTION 3. Section 24.151(f), Government Code, is amended to read as follows:

(f) In Webb County, the clerk of the district courts shall file all civil cases, except tax suits, on the Clerk's Civil File Docket and shall number the cases consecutively. All tax suits shall be assigned and docketed in the 49th District Court. All cases involving family violence, all cases under the Family Code, and all cases under the Health and Safety Code shall be assigned and docketed in the 402nd District Court. All other [Each] civil cases [case, except tax suits,] shall be assigned and docketed at random by the district clerk according to the following percentages: 49th District Court, 20 percent; 111th District Court, 60 percent; and the 341st District Court, 20 percent. The clerk shall keep a separate file docket, known as the Clerk's Criminal File Docket, for criminal cases and a separate file docket, known as the Clerk's Tax Suit Docket, for tax suits. [Each tax suit shall be assigned and docketed in the 49th District Court.] The clerk shall number the cases on the Clerk's Tax Suit Docket consecutively with a separate series of numbers and shall number the cases on the Clerk's Criminal File Docket consecutively with a separate series of numbers.

SECTION 4. Section 24.384, Government Code, is amended to read as follows:

Sec. 24.384. 205TH JUDICIAL DISTRICT ([~~CULBERSON,~~] EL PASO COUNTY[, ~~AND HUDSPETH COUNTIES~~]). (a) The 205th Judicial District is composed of [~~Culberson,~~] El Paso County [, ~~and Hudspeth counties~~].

(b) [~~The 205th District Court shall give preference to criminal cases.~~

[(c)] Section 24.136, relating to the 34th District Court, contains provisions applicable to both that court and the 205th District Court.

(c) The 205th District Court has jurisdiction of the community supervision and corrections department that serves Hudspeth and Culberson counties.

SECTION 5. Section 24.185, Government Code, is amended to read as follows:

Sec. 24.185. 83RD JUDICIAL DISTRICT (PECOS, TERRELL, REAGAN, VAL VERDE, AND UPTON COUNTIES). (a) The 83rd Judicial District is composed of Pecos, Terrell, Reagan, Val Verde, and Upton counties.

(b) The 83rd and 112th district courts have concurrent jurisdiction in Pecos, Reagan, and Upton counties.

(c) The 83rd and 63rd district courts have concurrent jurisdiction in Terrell and Val Verde counties.

(d) The terms of the 83rd District Court begin:

(1) on the second [~~ninth~~] Monday [~~after the first Mondays~~] in January and July;

(2) in Reagan County on the 14th Monday after the first Mondays in January and July; and

(3) in Upton County on the 12th Monday after the first Mondays in January and July.

(e) [~~(d)~~] In each of the counties of Pecos, Terrell, Val Verde, and Upton, a petition or other pleading filed in the district courts is sufficient if addressed "To The District Court of Pecos County, Texas," or "To The District Court of Terrell County, Texas," or "To The District Court of Upton County, Texas," or "To The District Court of Val Verde County, Texas," respectively, without giving the number of the district court in the address.

~~[(c) The secretary of state shall submit the changes made to this section by H.B. 3235 of the 74th Legislature, Regular Session, to the U.S. Justice Department for preclearance under Section 5 of the federal Voting Rights Act of 1965 as amended (42 U.S.C. Section 1973 et seq.). The changes made to this section by H.B. 3235 of the 74th Legislature, Regular Session, become inoperative if the U.S. Justice Department files a timely objection pursuant to Section 5 of the Voting Rights Act of 1965 as amended.]~~

SECTION 6. Section 43.133, Government Code, is amended to read as follows:

Sec. 43.133. 63RD JUDICIAL DISTRICT. (a) The voters of the 63rd Judicial District elect a district attorney.

(b) The district attorney for the 63rd district also acts as district attorney for the 83rd Judicial District in Terrell and Val Verde counties.

SECTION 7. (a) The local administrative district judge shall transfer all cases from Culberson and Hudspeth counties that are pending in the 205th District Court on the effective date of this Act to the 394th District Court.

(b) When a case is transferred from one court to another as provided by Subsection (a) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a court from which a case is transferred, are required to appear before the court to which a case is transferred as if originally required to appear before the court to which the transfer is made.

SECTION 8. The initial vacancies in the offices of judges of the 379th, 393rd, and 397th through 407th judicial districts shall be filled by election. The offices exist for purposes of the primary and general elections in 1998. Vacancies after the initial vacancies are filled as provided by Section 28, Article V, Texas Constitution.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1150**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 29, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1150** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
ZAFFIRINI
BARRIENTOS
NELSON
CARONA

GREENBERG
GOODMAN
STAPLES

On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 148**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 148** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BIVINS
SIBLEY
RATLIFF
LUNA

RANGEL
CUELLAR
RABUCK
SOLIS

BARRIENTOS

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the curricula of certain institutions of higher education, including skills testing and developmental coursework.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 61, Education Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. TRANSFER OF CREDIT

Sec. 61.821. DEFINITIONS. In this subchapter:

(1) "Core curriculum" means the curriculum in liberal arts, humanities, and sciences and political, social, and cultural history that all undergraduate students of an institution of higher education are required to complete before receiving an academic undergraduate degree.

(2) "Field of study curriculum" means a set of courses that will satisfy the lower division requirements for a bachelor's degree in a specific academic area at a general academic teaching institution.

Sec. 61.822. CORE CURRICULUM. (a) The board, with the assistance of advisory committees composed of representatives of institutions of higher education, shall develop a recommended core curriculum of at least 42 semester credit hours, including a statement of the content, component areas, and objectives of the core curriculum. At least a majority of the members of any advisory committee named under this section shall be faculty members of an institution of higher education.

(b) Each institution of higher education shall adopt a core curriculum of no less than 42 semester credit hours, including specific courses comprising the curriculum. The core curriculum shall be consistent with the common course-numbering system and with the statement, recommendations, and rules issued by the board. An institution may have a core curriculum of other than 42 semester credit hours only if approved by the board.

(c) If a student successfully completes the 42-hour core curriculum at an institution of higher education, that block of courses may be transferred to any other institution of higher education and must be substituted for the receiving institution's core curriculum. A student shall receive academic credit for each of the courses transferred and may not be required to take additional core curriculum courses at the receiving institution unless the board has approved a larger core curriculum at the institution.

(d) A student who transfers from one institution of higher education to another without completing the core curriculum of the sending institution shall receive academic credit from the receiving institution for each of the

courses that the student has successfully completed in the core curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy further course requirements in the core curriculum of the receiving institution.

Sec. 61.823. FIELD OF STUDY CURRICULUM. (a) The board, with the assistance of advisory committees composed of representatives of institutions of higher education, shall develop field of study curricula. Each advisory committee shall be equitably composed of representatives of institutions of higher education. Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee for that particular field of study. At least a majority of the members of any advisory committee named under this section shall be faculty members of an institution of higher education.

(b) If a student successfully completes a field of study curriculum developed by the board, that block of courses may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program for the field of study into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(c) A student who transfers from one institution of higher education to another without completing the field of study curriculum of the sending institution shall receive academic credit from the receiving institution for each of the courses that the student has successfully completed in the field of study curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy further course requirements in the field of study curriculum of the receiving institution.

Sec. 61.824. INSTITUTIONAL EVALUATIONS. Each institution shall review and evaluate the institution's core curriculum and applicable field of study curricula at intervals specified by the board and shall report the results of that review to the board.

Sec. 61.825. BOARD EVALUATIONS. The board shall develop criteria to evaluate the transfer practices of each institution of higher education and shall evaluate the transfer practices of each institution based on those criteria.

Sec. 61.826. DISPUTE RESOLUTION. (a) The board by rule shall adopt procedures to be followed by:

(1) institutions of higher education in resolving disputes concerning the transfer of lower division course credit; and

(2) the commissioner of higher education or the commissioner's designee in making a final determination concerning transfer of the course credit if the transfer is in dispute.

(b) Each institution of higher education shall publish in its course catalogs the procedures adopted by the board under Subsection (a) of this section.

(c) If an institution of higher education does not accept course credit earned by a student at another institution of higher education, that institution shall give written notice to the student and the other institution that the transfer of the course credit is denied. The two institutions and the student

shall attempt to resolve the transfer of the course credit in accordance with board rules. If the transfer dispute is not resolved to the satisfaction of the student or the institution at which the credit was earned within 45 days after the date the student received written notice of the denial, the institution that denies the transfer of the course credit shall notify the commissioner of its denial and the reasons for the denial.

(d) The commissioner of higher education or the commissioner's designee shall make the final determination about a dispute concerning the transfer of course credit and give written notice of the determination to the involved student and institutions.

(e) The board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the commissioner or the commissioner's designee.

Sec. 61.827. RULES. The board is authorized to adopt rules implementing the provisions of this subchapter.

Sec. 61.828. CONCURRENTLY ENROLLED STUDENTS. A student concurrently enrolled at more than one institution of higher education shall follow the core curriculum or the field of study curriculum of the institution in which the student is classified as a degree-seeking student.

Sec. 61.829. EFFECT ON OTHER POLICIES. This subchapter does not affect the authority of an institution of higher education to adopt its own admission standards in compliance with this title or its own grading policies.

SECTION 2. Section 51.306, Education Code, as amended by Chapters 76, 362, 747, 777, and 804, Acts of the 74th Legislature, 1995, is amended to read as follows:

Sec. 51.306. TEXAS ACADEMIC SKILLS PROGRAM [TESTING AND REMEDIAL COURSEWORK]. (a) In this section:

(1) "Board," "institution of higher education," ~~[and]~~ "private or independent institution of higher education," "general academic teaching institution," "public junior college," and "public technical institute" have the meanings assigned by Section 61.003 of this code.

(2) "Deaf student" means a student who is a deaf person as defined by Section 54.205(a) of this code.

(3) "Blind student" means a student who is a blind person as defined by Section 54.205(a) of this code.

(b) Each undergraduate student [All students in the following categories] who enters a [enter] public institution [institutions] of higher education must be tested for reading, writing, and mathematics skills prior to enrolling in any coursework. The board shall prescribe circumstances under which a student who has not been tested may enroll in coursework. A student who is permitted to enroll without taking the test prescribed by the board must take the test under Subsection (c) not later than the end of the first semester of enrollment[:

~~[(1) all full-time and part-time freshmen enrolled in a degree program;~~

~~[(2) any other student, prior to the accumulation of nine or more semester credit hours or the equivalent; and~~

~~[(3) any transfer student with fewer than 60 semester credit hours or the equivalent who has not previously taken the tests].~~

(c) For purposes of Subsection (b) ~~[that purpose]~~, the institution shall use the Texas Academic Skills Program Test [a test] instrument prescribed by the board. However, the board may prescribe an alternative test instrument for an institution to use to test a student. Each alternative test instrument prescribed shall be correlated with the Texas Academic Skills Program Test. ~~Each [The same instrument shall be used at all public institutions of higher education.~~

~~[(c) The]~~ test instrument adopted by the board must be of a diagnostic nature and be designed to provide a comparison of the skill level of the individual student with the skill level necessary for a student to perform effectively in an undergraduate degree program. In developing the Texas Academic Skills Program Test [test], the board shall consider the recommendations of faculty from various institutions of higher education.

(d) An institution may not use performance on the test as a condition of admission into the institution.

(e) The board shall prescribe minimum performance standards for each [the] test instrument. A student whose performance is below the standard for tested skill must participate in a developmental [remediation] program. An institution may require higher performance standards.

(f) If the test results indicate that developmental [remedial] education is necessary in any area tested, the institution shall refer the student to developmental [remedial] courses or other developmental [remedial] programs made available by the institution. Each institution shall make available those courses and programs on the same campus at which the student would otherwise attend classes. The courses or programs may not be considered as credit toward completion of degree requirements. On completion of the developmental coursework or program, the student shall take that portion of the Texas Academic Skills Program Test for which developmental education was required.

(g) A student may not enroll in any upper division course completion of which would give the student 60 or more semester credit hours or the equivalent until the student's Texas Academic Skills Program Test [test] results meet or exceed the minimum standards in each skill area for which developmental education was required or the student has earned a grade of "B" or better in a freshman-level credit course in the subject matter of the assessed deficit. For that purpose, the board shall establish a list of freshman-level credit courses for each skill area of the test instrument [all test scores]. The board shall establish other assessment procedures to be used by institutions ~~[in exceptional cases]~~ to allow a student to enroll in upper division courses in cases where student test results do not meet minimum standards.

(h) The state shall ~~[continue to]~~ fund approved nondegree credit developmental [remedial] courses; however, a general academic teaching institution may not receive funding for developmental coursework taken by a student in excess of 18 semester credit hours, and a public junior college or public technical institute may not receive funding for developmental

coursework taken by a student in excess of 27 semester credit hours. Additionally, the board shall develop formulas to augment institutional funding of other developmental [remedial] academic programs and shall develop a performance funding formula by which institutions may receive additional funding for each student who successfully completes the developmental courses. The additional funding required under such formulas shall be met by state appropriation [~~for fiscal years 1990-1991 and thereafter~~].

(i) Each institution shall establish an advising program to advise students at every level of courses and degree options that are appropriate for the individual student.

(j) The unit costs of each test shall be borne by the student. Costs of administering the tests to students shown to be financially needy under criteria established by the board shall be borne by the state through appropriation to the board for that purpose or other sources of funds. Additionally, appropriation shall be made to the board to cover overall administrative costs of the testing program.

(k) Each institution shall report annually to the board, on or before a day set by rule of the board, concerning the results of the students being tested and the effectiveness of the institution's developmental [remedial] program and advising program. In addition, the board shall publish annually a summary of the report required by Section 51.403(e) identifying [The report shall identify] by name the high school from which each tested student graduated and a statement as to whether or not the student's performance was above or below the standard. The summary must include the number of students at each high school who took and passed the test while enrolled in high school. For the purposes of this report, students shall not be identified by name. The board shall publish annually a report summarizing by institution of higher education for each academic year the total number of students who:

(1) entered a developmental program;

(2) completed developmental courses;

(3) took the Texas Academic Skills Program Test after completing developmental courses;

(4) passed the Texas Academic Skills Program Test after completing developmental courses; and

(5) satisfied the requirement of Subsection (g) in each skill area by earning an acceptable grade in an approved course as permitted by that subsection.

(l) [(m)(1)] A high school student who performs at or above a level set by the board on the exit-level assessment required under Section 39.023 [on the Texas Assessment of Academic Skills test to be set by the board] is exempt from this section. The level set by the board may not exceed a level that is equivalent to a 95 percent probability of passing the Texas Academic Skills Program Test. This exemption will be in effect for three years from the date a student takes the assessment and achieves [the Texas Assessment of Academic Skills test is taken and] the set score level [is achieved]. A student [Students] enrolling for the first time in an institution of higher education [Texas public colleges and universities] after the three-year period has elapsed must conform to all provisions of this section.

(m) An entering ~~[(2) Entering]~~ or transferring student ~~[students]~~ who has ~~[have]~~ achieved a score to be set by the board on the Scholastic Assessment Test or the American College Test is ~~[are]~~ exempt from the requirements of this section. The score set by the board may not exceed a score that is equivalent to a 95 percent probability of passing the Texas Academic Skills Program Test. This exemption is effective ~~[will be in effect]~~ for five years from the date ~~[either]~~ the Scholastic Assessment Test or the American College Test is taken and the set standard is achieved. A student ~~[Students]~~ enrolling for the first time in an institution of higher education ~~[Texas public colleges and universities]~~ after the five-year period has elapsed must conform to all provisions of this section.

(n) This section applies to a blind student only if the test is administered to that student in large print or Braille or is administered by audio cassette or by a reader, as appropriate to that student.

(o) A student at an institution of higher education is exempt from the requirements of this section if the student enrolls on a temporary basis at the institution of higher education and:

(1) is also enrolled at an accredited private or independent institution of higher education or an accredited out-of-state institution of higher education; or

(2) has graduated from an institution of higher education, an accredited private or independent institution of higher education, or an accredited out-of-state institution of higher education.

(p) To receive an exemption under Subsection (o) of this section, a student must present to the institution of higher education at which the student seeks the exemption as evidence of enrollment in another institution:

(1) a transcript, grade report, or paid fee receipt from the preceding semester; or

(2) any other evidence acceptable to the institution of higher education as proof of enrollment in the other institution.

(q) An exemption under Subsection (o) of this section terminates if the student:

(1) enrolls on a permanent basis in an institution of higher education; or

(2) enrolls in a certificate or degree program at an institution of higher education.

(r) This section does not apply to:

(1) a student who accumulated three or more college-level semester credit hours prior to the 1989 fall semester;

(2) a student located outside this state who enrolls in a course offered outside this state by an institution of higher education;

(3) a deaf student;

(4) a student who has graduated with a baccalaureate degree from an institution of higher education, an accredited private or independent institution of higher education, or an accredited out-of-state institution of higher education;

(5) a student enrolled in a certificate program at a community or technical college of one year or less; or

(6) a student who is a citizen of a country other than the United States and is not seeking a degree.

(s) [(p)] An institution of higher education shall provide to each student [under Subsection (b) of this section] who is accepted by the institution for admission and to whom this section applies information in the institution's catalog relating to the testing and developmental [remedial] requirements of this section and of the rules adopted by the Texas Higher Education Coordinating Board.

(t) [(q) This section does not apply to a deaf student.

[(q)] An institution may exempt a non-degree-seeking or non-certificate-seeking student who will be 55 years of age or older on the first class day of a term or semester from the testing requirements imposed by this section as a condition for enrollment during that term or semester in a course.

(u) [(q) This section does not apply to a student at an institution of higher education who:

[(1) enrolls on a temporary basis in the institution of higher education; and

[(2) is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education or has graduated from an institution of higher education, a private or independent institution of higher education, or an out-of-state institution of higher education.

[(q)] A student who has been diagnosed as having dyslexia or a related disorder, as those terms are defined by Section 38.003 [21.924(a)], or a specific learning disability in mathematics by a qualified professional whose license or credentials are appropriate to diagnose the disorder or disability as determined by the board and who completes the developmental [remedial] program prescribed by the institution may be required to retake the test once but may not be referred to an additional developmental [remedial] course or other developmental [remedial] program or precluded from enrolling in an upper division course because of the student's performance on the test.

(v) A student who has passed the exit-level assessment required under Section 39.023 shall be encouraged to take the test required by this section while enrolled in high school unless the student's scores on the exit-level assessment required under Section 39.023, on the Scholastic Assessment Test, or on the American College Test exempt the student from the test requirement as provided by this section. The Texas Education Agency shall work with the board to encourage eligible students to take the test; however, taking the test shall be voluntary.

(w)(1) The provisions of this subsection apply to high school students taking the test required by this section.

(2) Each eligible high school student shall pay for the cost of taking the test unless funds are appropriated for that purpose. If funds are appropriated for that purpose, the board and the Texas Education Agency shall develop a mechanism for the payment of the cost of the test.

(3) The board shall arrange for the test to be offered to high school students outside of regularly scheduled school days and at locations throughout the state.

(4) Except as authorized by the student, test scores of a high school student shall be reported only to the student and the student's parents.

(5) A high school student who fails to achieve the minimum required score set by the board may not be required to take developmental classes while in high school. However, after graduation from high school, a student who enters a public institution of higher education must comply with the provisions of this section.

(6) A high school student who achieves the minimum required score set by the board shall be deemed to have met the requirements of this section when enrolling at an institution of higher education, provided that the student enrolls in the institution not later than five years from the date the test is taken and the set score level is achieved. A student enrolling for the first time in an institution of higher education after the five-year period has elapsed must comply with all provisions of this section.

(7) The board and the Texas Education Agency shall work together to provide high school students, their parents, and their schools with information about the Texas Academic Skills Program and assist them in interpreting the results of the test.

[(r) To receive an exemption under Subsection (q), a student must:

[(1) if the student claims the exemption because the student is also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education, present to the institution of higher education at which the student seeks the exemption as evidence of enrollment in the other institution:

[(A) a transcript, grade report, or paid fee receipt from the preceding semester; or

[(B) any other evidence acceptable to the institution of higher education as proof of enrollment in the other institution;

[(2) if the student claims the exemption because the student has graduated from an institution of higher education, a private or independent institution of higher education, or an out-of-state institution of higher education, present to the institution of higher education at which the student seeks the exemption as evidence of graduation from the other institution a diploma or transcript; and

[(3) sign a form stating that the student does not intend to enroll on a permanent basis in or receive a certificate or degree from the institution of higher education at which the student seeks the exemption.

[(s) An exemption under Subsection (q) terminates if the student:

[(1) enrolls on a permanent basis in the institution of higher education; or

[(2) enrolls in a certificate or degree program at the institution of higher education;

[(s) This section does not apply to a student enrolled in a certificate program of one year or less.]

SECTION 3. Sections 51.305 and 61.078, Education Code, are repealed.

SECTION 4. (a) Not later than September 1, 1998, the Texas Higher Education Coordinating Board shall adopt rules to implement Subchapter S, Chapter 61, Education Code, as added by this Act.

(b) The change in law made by this Act to Section 51.306(b), Education Code, requiring each student to be tested for reading, writing, and mathematics skills before enrolling in course work, takes effect beginning with the fall semester 1998.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1355

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1355** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN
ELLIS
HAYWOOD
WENTWORTH

MAXEY
COUNTS
McCALL
SWINFORD
WISE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to the regulation of certain retail sellers and retail establishments; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. MISCELLANEOUS DUTIES OF COMPTROLLER

Sec. 403.321. INTERAGENCY TASK FORCE ON TEXAS RETAIL FOOD STORE REGULATION. (a) An interagency task force is created to

advise and assist the comptroller on coordinating state agency regulation of retail food stores.

(b) The office of the comptroller is the lead agency for the task force and shall administer the activities of the task force.

(c) The task force is composed of a representative of:

(1) the Department of Agriculture, appointed by the commissioner of agriculture;

(2) the Texas Department of Commerce, appointed by the executive director of the department;

(3) the Texas Department of Health, appointed by the commissioner of public health;

(4) the Parks and Wildlife Department, appointed by the executive director of the department;

(5) the comptroller, appointed by the comptroller;

(6) the Texas Alcoholic Beverage Commission, appointed by the administrator of the commission;

(7) the Texas Retailer's Association, appointed by the association;

(8) the Texas Food Industry Association, appointed by the association;

(9) the Texas Petroleum Marketers and Convenience Stores Association, appointed by the association;

(10) a rural local health department, appointed by the governor;

(11) an urban local health department, appointed by the governor;

(12) rural consumers, appointed by Consumers Union;

(13) urban consumers, appointed by Consumers Union; and

(14) vendors and suppliers to retail stores, appointed jointly by the comptroller and the commissioner of agriculture.

(d) A licensing and regulatory agency shall make available to the task force information considered necessary by the task force.

(e) The task force may invite representatives of state agencies, consumer groups, or business groups to participate in the activities of the task force.

(f) The task force shall:

(1) elect a presiding officer and an assistant presiding officer;

(2) study the regulation of retail food stores; and

(3) report to the legislature regarding the task force's study of the regulation of retail food stores.

(g) The task force shall consider and include in the report required by Subsection (f)(3) the task force's recommendations concerning:

(1) state agencies' procedures for:

(A) issuing original and renewal licenses and permits; and

(B) collecting and disbursing fees;

(2) opportunities to consolidate state agencies' licensing and fee collection activities;

(3) integration of uniform product code price scanner inspection into the sales tax audit process;

(4) establishment of a consolidated retail food store application and licensing program to administer all licenses related to retail food stores;

(5) reduction of paperwork;

(6) reduction of any amount of time that scales and other equipment are out of service;

(7) continuation of adequate consumer protection;

(8) creation of private sector employment opportunities;

(9) opportunities to eliminate the Department of Agriculture's responsibilities for the inspection of eggs that are sold or offered for sale at retail in this state while ensuring that an egg producer in another state that sells eggs directly to a retail egg dealer in this state is held to the same standards as an egg producer in this state; and

(10) any other regulatory matter pertaining to a retail food store that a majority of the members of the committee considers advisable.

(h) This section expires June 1, 1999.

SECTION 2. Section 13.002, Agriculture Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), the [The] department shall enforce the provisions of this chapter and shall supervise all weights and measures sold or offered for sale in this state. The department may purchase apparatus as necessary for the administration of this chapter.

(c) The Texas State Board of Pharmacy shall enforce the provisions of this chapter relating to the compounding of drugs in pharmacies and shall supervise all weights and measures sold, offered for sale, or used in this state for the compounding of drugs in pharmacies.

SECTION 3. Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4041 to read as follows:

Sec. 13.4041. BUSINESS OPPORTUNITY INFORMATION. The Texas Department of Commerce shall cooperate with the department to:

(1) disseminate information regarding business opportunities available to a person who performs tests of the accuracy of weighing or measuring devices in this state; and

(2) develop markets for providers of testing services that test the accuracy of weighing or measuring devices in this state.

SECTION 4. Effective September 1, 1999, Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4042 to read as follows:

Sec. 13.4042. PRIVATE TESTING REQUIREMENT. (a) Employees of the department or by interagency contract employees of other state agencies acting on behalf of the department may not perform more than 50 percent of the inspections or tests required by law of the accuracy of weighing or measuring devices in this state.

(b) Subsection (a) does not prohibit an agent of the department from performing an inspection or a test of the accuracy of a weighing or measuring device in this state.

(c) This section expires September 1, 2001.

SECTION 5. Effective September 1, 2001, Subchapter H, Chapter 13, Agriculture Code, is amended by adding Section 13.4043 to read as follows:

Sec. 13.4043. PRIVATE TESTING REQUIREMENT. (a) Employees of the department or by interagency contract employees of other state agencies acting on behalf of the department may not perform more than 25 percent of the inspections or tests required by law of the accuracy of weighing or measuring devices.

(b) Subsection (a) does not prohibit an agent of the department from performing an inspection or test of the accuracy of a weighing or measuring device in this state.

SECTION 6. The heading of Chapter 19, Business & Commerce Code, is amended to read as follows:

CHAPTER 19. FARM, INDUSTRIAL, OFF-ROAD CONSTRUCTION
AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SECTION 7. Section 19.01, Business & Commerce Code, is amended by amending Subdivisions (5) and (8) to read as follows:

(5) "Dealer" means a person in the business of the retail sale of equipment. ~~[The term does not include a person whose principal business is the sale of off-road construction equipment.]~~

(8) "Equipment" means farm tractors, farm implements, utility tractors, industrial tractors, off-road construction equipment, and outdoor power equipment and the attachments to or repair parts for those items.

SECTION 8. Section 19.43(a), Business & Commerce Code, is amended to read as follows:

(a) If on termination of a dealer agreement the dealer delivers to the supplier or a person designated by the supplier the inventory that was purchased from the supplier and that is held by the dealer on the date of the termination, the supplier shall pay to the dealer:

(1) the dealer cost of new, unsold, undamaged, and complete farm tractors, farm implements, utility tractors, industrial tractors, forklifts, material-handling equipment, outdoor power equipment, off-road construction equipment, and attachments returned by the dealer;

(2) an amount equal to 85 percent of the current price of new, undamaged repair parts returned by the dealer; and

(3) an amount equal to an additional five percent of the current price of new, undamaged repair parts returned by the dealer, unless the supplier performs the handling, packing, and loading of the parts, in which case no additional amount is required under this subdivision.

SECTION 9. Section 438.034, Health and Safety Code, is amended to read as follows:

Sec. 438.034. EMPLOYEE CLEANLINESS. (a) A person handling food or unsealed food containers shall:

(1) maintain personal cleanliness;

(2) wear clean outer garments;

(3) keep the person's hands clean; and

(4) either:

(A) wash the person's hands and exposed portions of their arms with soap and water:

(i) before starting work;

(ii) during work as often as necessary to avoid cross-contaminating food and to maintain cleanliness; and

(iii) after smoking, eating, and each visit to the toilet; or

(B) avoid bare-hand contact with exposed food by use of gloves or utensils and hand wash after smoking, eating, and each visit to the toilet.

(b) In no case may a state or local authority require foodservice personnel to avoid bare-hand contact with exposed food.

SECTION 10. Subchapter A, Chapter 47, Parks and Wildlife Code, is amended by adding Section 47.0113 to read as follows:

Sec. 47.0113. MEMORANDUM OF AGREEMENT. (a) The department shall initiate negotiations for and enter into a memorandum of agreement with the Texas Department of Health to consolidate the license and permit application process for retail food stores that sell aquatic products.

(b) The memorandum must be adopted by the Texas Board of Health and the commission.

(c) After the commission and the Texas Board of Health have adopted a memorandum of agreement, the department shall publish the memorandum of agreement in the Texas Register.

(d) The memorandum of agreement must provide that the Texas Department of Health shall collect information to identify each retail food store that sells aquatic products as a part of a food retailing business and provide that information to the department.

SECTION 11. Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Automotive fuel rating" has the meaning assigned by 15 U.S.C. Section 2821.

(2) "Dealer" has the meaning assigned by Section 153.001, Tax Code [means a person who is the operator of a service station or other retail outlet and who delivers motor fuel into the fuel tanks of motor vehicles or motor boats].

(3) "Distributor" has the meaning assigned by Section 153.001, Tax Code.

(4) [(2)] "Motor fuel" has the meaning assigned [given that term] by Section 153.001, Tax Code.

(5) "Supplier" has the meaning assigned by Section 153.001, Tax Code.

Sec. 2. TESTING. In order to determine compliance with the standards and for the enforcement of rules adopted under Sections 3, ~~3A, 3B,~~ 4, and 5 of this Act, the commissioner of agriculture ~~[comptroller of public accounts or an authorized representative of the comptroller, any law enforcement officer at the direction of a prosecuting attorney, or the attorney general]~~ may test any motor fuel sold in this state, with or without a complaint about the fuel. The commissioner may adopt rules relating to the frequency of testing of motor fuels. In adopting rules relating to the frequency of testing of motor fuels, the commissioner shall consider the nature of the violation, history of past violations, and funds available as provided by Section 9(e) of this Act.

Sec. 3. POSTING NOTICE OF SALE OF ALCOHOL AND MOTOR FUEL MIXTURE. (a) A ~~[motor fuel]~~ dealer in this state may not sell or offer for sale any motor fuel from a motor fuel pump that is supplied by a storage tank into which motor fuel containing ethanol in a mixture in which one percent or more of the mixture measured by volume is ethanol or into which

motor fuel containing methanol in a mixture in which one percent or more of the mixture measured by volume is methanol has been delivered within the 60-day period preceding the day of sale or offer of sale, unless the dealer prominently displays on the pump from which the mixture is sold a sign that complies with the requirements of Subsection (b) of this section.

(b)(1) The sign required under Subsection (a) of this section must be displayed on each face of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed. The sign must state "Contains Ethanol" or "Contains Methanol," as applicable. The sign must appear in contrasting colors with block letters at least one-half inch in height and one-fourth inch in width and shall be displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(2) In addition to the requirements of Subsection (b)(1) of this section, if a motor fuel pump is supplied by a storage tank into which motor fuel containing 10 percent or more ethanol by volume or five percent or more methanol by volume has been delivered within the 60-day period preceding the day of the sale or offer of sale, the sign shall state the percentage of ethanol or methanol by volume, to the nearest whole percent, of the motor fuel having the highest percentage of ethanol or methanol delivered into that storage tank within the 60-day period. This subsection does not prohibit the posting of other alcohol or additive information, the information and posting being subject to regulations by the commissioner of agriculture.

Sec. 3A. SALE OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING POSTED ON PUMP LABEL. A dealer may not sell or offer for sale motor fuel from a motor fuel pump if the motor fuel has an automotive fuel rating that is lower than the automotive fuel rating for that motor fuel posted on the pump.

Sec. 3B. DELIVERY OF MOTOR FUEL WITH AUTOMOTIVE FUEL RATING LOWER THAN RATING CERTIFIED BY TRANSFER. A distributor or supplier may not deliver or transfer motor fuel to a dealer if the fuel has an automotive fuel rating that is lower than the certification of the automotive fuel rating the distributor or supplier is required to make to the motor fuel dealer under federal law.

Sec. 4. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES.

(a) A distributor, supplier, wholesaler, or jobber of motor fuel, as those persons are defined by Section 153.001, Tax Code, may not make a delivery of motor fuel containing ethanol or methanol if the ethanol or methanol in the motor fuel mixture exceeds one percent by volume, other than a delivery made into the fuel supply tanks of a motor vehicle, to any outlet in this state unless the person delivers to the outlet receiving the delivery at the time of the delivery of the mixture:

(1) the sign described in Section 3 of this Act in sufficient quantities for the dealer receiving the motor fuel mixture to comply with the requirements of this Act; and

(2) a manifest, bill of sale, bill of lading, or any other document evidencing delivery of the motor fuel containing ethanol or methanol, which shall include a statement showing the percentage of ethanol or methanol contained in the mixture delivered, and the types and percentages of

associated cosolvents, if any, contained in the mixture delivered. The document shall also show delivery of the sign or signs, as applicable, required to be delivered by this subsection.

(b) On the request of any motor fuel user, a dealer must reveal the percentage of ethanol contained in motor fuel being sold, the percentage of methanol contained in motor fuel being sold, and, if the motor fuel contains methanol, the types and percentages of associated cosolvents contained in the motor fuel being sold.

(c) The commissioner of agriculture ~~[comptroller]~~ by rule may prescribe the form of the statement required by Subsection (a) of this section.

(d) The signs required to be posted by a ~~[motor fuel]~~ dealer under Section 3 of this Act and delivered to a ~~[motor fuel]~~ dealer under this section shall be obtained from the commissioner of agriculture ~~[comptroller]~~.

(e) If the commissioner of agriculture ~~[comptroller]~~ determines that certain types of motor fuel, such as diesel or liquefied petroleum gas, are not sold in this state as mixtures with alcohol in sufficient quantities to warrant regulation of those deliveries under this Act, the commissioner ~~[comptroller]~~ may limit the application of Section 3 of this Act and this section to motor fuels sold in sufficient quantity to warrant regulation.

Sec. 5. DEALER AND DELIVERY DOCUMENTS. (a) Each ~~[motor fuel]~~ dealer ~~[in this state]~~ shall keep for one year ~~[four years]~~ a copy of each manifest, bill of sale, bill of lading, or any other document required to be delivered to the dealer by Section 4 of this Act. During the first 60 days following delivery of a fuel mixture covered by this Act, the dealer shall keep at the station or retail outlet where the motor fuel was delivered a copy of each manifest, bill of sale, bill of lading, or any other document required to be delivered to the dealer by Section 4 of this Act. Each distributor, supplier, wholesaler, or jobber of motor fuel shall keep for one year ~~[four years]~~ at the principal place of business a copy of each manifest, bill of sale, bill of lading, or any other document required to be delivered to the dealer by Section 4 of this Act. The documents are subject to inspection by the commissioner of agriculture ~~[comptroller or an authorized representative of the comptroller, any law enforcement officer, or the attorney general]~~.

(b) The commissioner of agriculture ~~[comptroller]~~ by rule may prescribe the manner of filing documents required to be kept under Subsection (a) of this section, and the time, place, and manner of inspection of the documents.

Sec. 5A. DOCUMENTS RELATING TO POSTINGS OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. (a) Each dealer shall keep for at least one year a copy of:

(1) each delivery ticket or letter of certification on which the dealer based a posting of the automotive fuel rating of motor fuel contained in a motor fuel pump;

(2) records of any automotive fuel rating determination made by the dealer under 16 C.F.R. Part 306, as amended; and

(3) each delivery ticket or letter of certification that is required to be delivered to the dealer under 16 C.F.R. Part 306, as amended.

(b) Each distributor or supplier shall keep for at least one year at the principal place of business a copy of each delivery ticket or letter of

certification required to be delivered by the distributor or supplier to a dealer under 16 C.F.R. Part 306, as amended.

(c) A document required to be kept under this section is subject to inspection by the commissioner of agriculture.

Sec. 6. CIVIL ACTION. (a) If a [~~motor-fuel~~] dealer or a distributor, supplier, wholesaler, or jobber of motor fuel violates Section 3, 3A, 3B, 4, or 5 of this Act, any motor fuel user who has purchased the fuel and who has suffered damages or has a complaint about the product may maintain a civil action against the [~~motor-fuel~~] dealer or the distributor, supplier, wholesaler, or jobber of motor fuel. The action may be brought, without regard to any specific amount in damages, in the district court in any county in which the [~~motor-fuel~~] dealer, distributor, supplier, wholesaler, or jobber is doing business or in which the [~~motor-fuel~~] user resides.

(b) In any action under this section, the court shall award to the motor fuel user who prevails the amount of actual damages and grant such equitable relief as the court determines is necessary to remedy the effects of the [~~motor-fuel~~] dealer's violation or the distributor, supplier, wholesaler, or jobber's violation of the provisions of Section 3, 3A, 3B, 4, or 5 of this Act, including declaratory judgment, permanent injunctive relief, and temporary injunctive relief. In addition, the court shall award to the motor fuel user who prevails in an action brought hereunder court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(c) In addition to the remedies provided in Subsection (b) of this section, if the trier of fact finds that a [~~the~~] violation of Section 3, 3A, 3B, 4, or 5 of this Act was committed wilfully or knowingly by the defendant, the trier of fact shall award not more than three times the amount of actual damages.

(d) A violation of Section 3, 3A, 3B, 4, or 5 of this Act is also a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Any action alleging a violation of Section 3, 3A, 3B, 4, or 5 of this Act shall be commenced and prosecuted within two years after the date the cause of action accrued.

Sec. 7. CIVIL PENALTY. A [~~motor-fuel~~] dealer or a distributor, supplier, wholesaler, or jobber of motor fuel who violates a provision of Section 3, 3A, 3B, 4, [~~or~~] 5, or 5A of this Act forfeits to the state a civil penalty of not less than \$200 or [~~\$25 nor~~] more than \$10,000 [~~\$200~~].

Sec. 7A. ADMINISTRATIVE PENALTY. (a) The commissioner of agriculture may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for a violation may be in an amount not to exceed \$500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An employee of the Department of Agriculture designated by the commissioner to act under this section who determines that a violation has occurred may issue to the commissioner of agriculture a report that states the facts on which the determination is based and the designated employee's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the designated employee shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the designated employee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the designated employee, the commissioner of agriculture by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the designated employee shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of agriculture a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of agriculture by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner of agriculture's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner of agriculture's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner of agriculture's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the designated employee by certified mail.

(l) A designated employee who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the designated employee may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner of agriculture:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 8. CRIMINAL OFFENSES AND PENALTIES. (a) A person commits an offense if the person intentionally or knowingly violates Section 3, 3A, 3B, 4, [or] 5, or 5A of this Act or any rule of the commissioner of agriculture [comptroller] prescribed to enforce or implement those sections of this Act.

(b) A person commits an offense if the person intentionally or knowingly:

(1) refuses to permit a person authorized by Section 2 of this Act to test any motor fuel sold or held for sale in this state;

(2) refuses to permit inspection of any document required to be kept or delivered by this Act upon request of a person authorized to inspect such documents by Section 5 or 5A of this Act; or

(3) mutilates, destroys, secretes, forges, or falsifies any document, record, report, or sign required to be delivered, kept, filed, or posted by this Act or any rule prescribed by the commissioner of agriculture [comptroller] for the enforcement of this Act.

(c) An offense under Subsection (a) of this section is a Class C misdemeanor.

(d) An offense under Subsection (b) of this section is a Class B misdemeanor.

(e) The commissioner of agriculture may request a prosecuting attorney to prosecute a violation of this Act [A user, the comptroller or the comptroller's authorized representative, any law enforcement officer, or the attorney general may file a complaint under this section].

Sec. 9. RULES AND FEES. (a) The commissioner of agriculture [comptroller] may adopt rules not inconsistent with this Act for the regulation of the sale of motor fuels containing ethanol and methanol.

(b) The comptroller by rule may impose fees for testing, inspection, statement or record forms, sale of signs, or the performance of other services provided as determined necessary by the commissioner of agriculture in the administration of this Act.

(c) In addition to the fees authorized by Subsection (b) of this section, the comptroller by rule may impose a fee to be collected on a periodic basis determined by the comptroller from each distributor, supplier, wholesaler, and jobber who deals in a motor fuel, without regard to whether the motor fuel is subject to regulation under this Act, as determined necessary by the commissioner of agriculture. The comptroller by rule shall prescribe the form for reporting and remitting the fees imposed by and under this section.

(d) The fees and penalties imposed by this Act or by a rule of the comptroller made pursuant to this Act shall be subject to the provisions of Chapter 111 and Sections 153.006, 153.007, and 153.401, Tax Code, except to the extent those sections are in conflict with this Act.

(e) The total amount of the fees collected annually under this Act may not exceed the lesser of:

(1) the costs of administering and enforcing the provisions of this Act as determined necessary by the commissioner of agriculture; or

(2) \$500,000.

(f) The fees collected under this section may be used only:

(1) by the comptroller to defray the cost of collecting the fees and penalties imposed by this Act but may not exceed \$25,000 annually; or

(2) by the commissioner of agriculture for the administration and enforcement of this Act [by the comptroller and shall be deposited in the Comptroller's Operating Fund 062].

Sec. 10. ~~[Contracting for]~~ ENFORCEMENT. The commissioner of agriculture shall enforce this Act and [comptroller] may not contract for the enforcement of this Act ~~[after due notice]~~.

Sec. 11. DELIVERY OF DOCUMENTS TO FEDERAL GOVERNMENT. The commissioner of agriculture may make a copy of a manifest, bill of sale, bill of lading, delivery ticket, letter of certification, or other document the commissioner may inspect under this Act. The commissioner may deliver a copy of a document made as provided by this section to the federal government for purposes of prosecuting a person for a violation of federal law relating to the sale or transfer of motor fuel.

Sec. 12. BUSINESS OPPORTUNITY INFORMATION. The Texas Department of Commerce shall cooperate with the Department of Agriculture to:

(1) disseminate information regarding business opportunities available to a person who performs automotive fuel rating tests; and

(2) develop markets for providers of automotive fuel rating testing services.

SECTION 12. Effective September 1, 1999, Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is amended by adding Section 13 to read as follows:

Sec. 13. PRIVATE TESTING REQUIREMENT. (a) Employees of the Department of Agriculture may not perform more than 50 percent of automotive fuel rating tests required by law.

(b) Subsection (a) does not prohibit an employee of the Department of Agriculture from performing an automotive fuel rating test.

(c) This section expires September 1, 2001.

SECTION 13. Effective September 1, 2001, Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is amended by adding Section 13A to read as follows:

Sec. 13A. PRIVATE TESTING REQUIREMENT. (a) Employees of the Department of Agriculture may not perform more than 25 percent of the automotive fuel rating tests required by law.

(b) Subsection (a) does not prohibit an employee of the Department of Agriculture from performing an automotive fuel rating test.

SECTION 14. Section 10.03, Chapter 419, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 10.03. TRANSITION: LICENSING. Subchapter H, Chapter 13, Agriculture Code, ~~[as added by this Act,]~~ relating to inspecting or testing of a weighing or measuring device, applies to a person on or after September 1, 1997 ~~[only after the Department of Agriculture reasonably demonstrates to the Legislative Budget Board that the department's licensing programs for inspection and testing of liquefied petroleum gas meters and inspection and testing of ranch scales under Subchapters F and G, Chapter 13, Agriculture Code, respectively, will attain the performance goals established by the Legislative Budget Board].~~

SECTION 15. (a) This Act takes effect September 1, 1997.

(b) The changes in law made by Section 11 of this Act apply only to a delivery, transfer, or sale, as applicable, of motor fuel that occurs on or after September 1, 1997. A delivery, transfer, or sale of motor fuel that occurs before September 1, 1997, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) All rules adopted by the comptroller for the administration of Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), in effect on September 1, 1997, remain in effect until amended or repealed by the commissioner of agriculture.

(d) Before December 1, 1997, each entity named in Section 403.321, Government Code, as added by this Act, shall appoint a representative to serve as a member of the Interagency Task Force on Texas Retail Food Store Regulation.

(e) The Parks and Wildlife Department and the Texas Department of Health shall enter into the memorandum of agreement under Section 47.0113, Parks and Wildlife Code, as added by this Act, and shall assume their responsibilities as provided by this Act and the agreement before January 1, 1999.

(f) The Interagency Task Force on Texas Retail Food Store Regulation shall report to the legislature under Section 403.321, Government Code, as added by this Act, before January 1, 1999.

(g) The changes in law made by this Act relating to a penalty that may be imposed apply only to a violation that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 318**

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 318** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS	CUELLAR
HAYWOOD	RHODES
RATLIFF	KRUSEE
SIBLEY	

On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1230**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1230** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN	PLACE
BIVINS	McREYNOLDS
FRASER	A. REYNA
HAYWOOD	
MADLA	

On the part of the Senate On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1301**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1301** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE
SHAPLEIGH
PATTERSON
WENTWORTH
SHAPIRO

ALLEN
HIGHTOWER
RAMSAY

On the part of the Senate

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1941**

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1941** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER
BROWN
LUCIO
OGDEN
NIXON

On the part of the Senate

PLACE
GUTIERREZ
KUEMPEL
HIGHTOWER
KING

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3350**

Senator Sibley submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3350** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SIBLEY
SHAPIRO
NELSON

On the part of the Senate

PLACE
DUNNAM
GALLOWAY
HIGHTOWER
KEEL

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 414**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 414** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF

ELLIS

MADLA

ZAFFIRINI

On the part of the Senate

COLEMAN

BERLANGA

DAVILA

HIRSCHI

On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to certain advance directives for medical treatment; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. ADVANCE DIRECTIVES

SECTION 1.01. Subtitle H, Title 2, Health and Safety Code, is amended by adding a chapter heading for Chapter 166 to read as follows:

CHAPTER 166. ADVANCE DIRECTIVES

SECTION 1.02. Subtitle H, Title 2, Health and Safety Code, is amended by adding Subchapter A, Chapter 166, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 166.001. SHORT TITLE. This chapter may be cited as the Advance Directives Act.

Sec. 166.002. DEFINITIONS. In this chapter:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or

(C) a durable power of attorney for health care.

(2) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(3) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(4) "Declarant" means a person who has executed or issued a directive under this chapter.

(5) "Durable power of attorney for health care" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(6) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(7) "Life-sustaining procedure" means a medical procedure, treatment, or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a vital function and, when applied to a person in a terminal condition, serves only to prolong the process of dying. The term does not include the administration of medication or the performance of

a medical procedure considered to be necessary to provide comfort or care or to alleviate pain.

(8) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(9) "Terminal condition" means an incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable medical judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the patient's death. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(10) "Witness" means a person who may serve as a witness under Section 166.003.

Sec. 166.003. WITNESSES. (a) In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed, a witness may not be:

(1) related to the declarant by blood or marriage;

(2) entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

(3) the attending physician;

(4) an employee of the attending physician;

(5) a person or agent designated by the declarant to make a treatment decision;

(6) a person who, at the time the directive is executed or the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death; or

(7) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care or is directly involved in the financial affairs of the facility.

(b) For purposes of Subsection (a)(7), a person is directly involved in the financial affairs of a health care facility if the person serves as an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE. (a) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the health care provider is unwilling or unable to withhold in accordance with an advance directive.

(b) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (a). The notice must be provided at the earlier of:

(1) the time the individual is admitted to receive services from the health care provider; or

(2) the time the health care provider begins providing care to the individual.

(c) If, at the time notice is to be provided under Subsection (b), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

(1) the individual's legal guardian;

(2) the individual's spouse;

(3) the individual's adult child;

(4) the individual's parent;

(5) the person admitting the individual; or

(6) another person responsible for the health care decisions of the individual.

(d) If Subsection (c) applies and except as provided by Subsection (e), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (c), the health care provider is not required to provide the required notice.

(e) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (b) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(f) In this section, health care provider means:

(1) a hospital, including a rural primary care hospital;

(2) an institution licensed under Chapter 242, including skilled nursing facilities;

(3) a home and community support services agency;

(4) a personal care facility; and

(5) a special care facility.

(g) This section does not apply to outpatient hospital services, including emergency services.

SECTION 1.03. Chapter 672, Health and Safety Code, is transferred to Subtitle H, Title 2, Health and Safety Code, is redesignated as Subchapter B, Chapter 166, Health and Safety Code, and is amended to read as follows:

SUBCHAPTER B [CHAPTER 672]. NATURAL DEATH [ACT

[Sec. 672.001. SHORT TITLE. This chapter may be cited as the Natural Death Act.]

Sec. 166.031 [672.002]. DEFINITIONS. In this subchapter [chapter]:

(1) ["Attending physician" means the physician who has primary responsibility for a patient's treatment and care;

(2) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

~~[(3) "Declarant" means a person who has executed or issued a directive under this chapter.~~

~~[(4)] "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 [672.003, 672.005, or 672.006] to withhold or withdraw life-sustaining procedures in the event of a terminal condition.~~

~~(2) [(5) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.~~

~~[(6) "Life-sustaining procedure" means a medical procedure or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a vital function, and only artificially postpones the moment of death of a patient in a terminal condition whose death is imminent or will result within a relatively short time without the application of the procedure. The term does not include the administration of medication or the performance of a medical procedure considered to be necessary to provide comfort or care or to alleviate pain.~~

~~[(7) "Physician" means a physician licensed by the Texas State Board of Medical Examiners or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.~~

~~[(8)] "Qualified patient" means a patient with a terminal condition that has been diagnosed and certified in writing by the attending physician and one other physician who have personally examined the patient.~~

~~[(9) "Terminal condition" means an incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable medical judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the patient's death.]~~

Sec. 166.032 [672.003]. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) The declarant must sign the directive in the presence of two witnesses, and those witnesses must sign the directive.

(c) ~~[A witness may not be:~~

~~[(1) related to the declarant by blood or marriage;~~

~~[(2) entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;~~

~~[(3) the attending physician;~~

~~[(4) an employee of the attending physician;~~

~~[(5) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is directly involved in the financial affairs of the facility;~~

~~[(6) a patient in a health care facility in which the declarant is a patient; or~~

~~[(7) a person who, at the time the directive is executed, has a claim against any part of the declarant's estate after the declarant's death.~~

~~[(d)]~~ A declarant may include in a directive directions other than those provided by Section 166.033 ~~[672.004]~~ and may designate in a directive a person to make a treatment decision for the declarant in the event the declarant becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

~~(d)~~ ~~[(e)]~~ A declarant shall notify the attending physician of the existence of a written directive. If the declarant is comatose, incompetent, or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.

Sec. 166.033 ~~[672.004]~~. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

"DIRECTIVE
TO PHYSICIANS

"Directive made this _____ day of _____ (month, year).

"I _____, being of sound mind, wilfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth in this directive.

"1. If at any time I should have an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and if the application of life-sustaining procedures would serve only to artificially postpone the moment of my death, and if my attending physician determines that my death is imminent or will result within a relatively short time without the application of life-sustaining procedures, I direct that those procedures be withheld or withdrawn, and that I be permitted to die naturally.

"2. In the absence of my ability to give directions regarding the use of those life-sustaining procedures, it is my intention that this directive be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from that refusal.

"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive has no effect during my pregnancy.

"4. This directive is in effect until it is revoked.

"5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"6. I understand that I may revoke this directive at any time.

"Signed _____

(City, County, and State of Residence)

I am not related to the declarant by blood or marriage. I would not be entitled to any portion of the declarant's estate on the declarant's death. I am not the attending physician of the declarant or an employee of the attending physician. ~~[I am not a patient in the health care facility in which the declarant is a patient.]~~ I have no claim against any portion of the declarant's estate on the declarant's death. Furthermore, if I am an employee of a health care facility in which the declarant is a patient, I am not involved in providing direct patient care to the declarant and am not an officer, director, partner, or

business office employee of the health care facility or of any parent organization of the health care [directly involved in the financial affairs of the health] facility.

"Witness _____"
"Witness _____"

Sec. 166.034 [672.005]. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses. [The witnesses must possess the same qualifications as are required by Section 672.003(c).]

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record and the witnesses shall sign the entry in the medical record.

Sec. 166.035 [672.006]. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

- (1) the patient's spouse, if the spouse is an adult;
- (2) the patient's parents; or
- (3) the patient's legal guardian.

Sec. 166.036. NOTARIZED DOCUMENT NOT REQUIRED: REQUIREMENT OF SPECIFIC FORM PROHIBITED. (a) A written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

- (1) a directive be notarized; or
- (2) a person use a form provided by the physician, health care facility, or health care professional.

Sec. 166.037 [672.007]. PATIENT DESIRE SUPERSEDES DIRECTIVE. The desire of a competent qualified patient, including a competent qualified patient younger than 18 years of age, supersedes the effect of a directive.

Sec. 166.038 [672.008]. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when an adult qualified patient has executed or issued a directive and is comatose, incompetent, or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 166.032(c) [672.003(d)], the attending physician and the designated person may make a treatment decision to withhold or withdraw life-sustaining procedures from the patient.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

Sec. ~~166.039~~ [672-009]. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult qualified patient has not executed or issued a directive and is comatose, incompetent, or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a durable power of attorney for health care may make a treatment decision that may include a decision to withhold or withdraw life-sustaining procedures from the patient.

(b) If the patient does not have a legal guardian or an agent under a durable power of attorney for health care, the attending physician and one person from one [at least two persons, if available,] of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining procedures:

- (1) the patient's spouse;
- (2) ~~a majority of~~ the patient's reasonably available adult children;
- (3) the patient's parents; or
- (4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician [made in the presence of at least two witnesses who possess the same qualifications as are required by Section 672.003(c)].

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be witnessed by another physician who is not involved in the treatment of the patient.

~~(f) [(e)]~~ The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining procedures.

Sec. ~~166.040~~ [672-010]. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal condition.

(b) Before withholding or withdrawing life-sustaining procedures from a qualified patient under this subchapter [~~chapter~~], the attending physician must:

- (1) determine that the patient's death is imminent or will result within a relatively short time without application of those procedures;
- (2) note that determination in the patient's medical record; and
- (3) determine that the steps proposed to be taken are in accord with this subchapter [~~chapter~~] and the patient's existing desires.

Sec. ~~166.041~~ [672-011]. DURATION OF DIRECTIVE. A directive is effective until it is revoked as prescribed by Section ~~166.042~~ [672-012].

Sec. ~~166.042~~ [672-012]. REVOCATION OF DIRECTIVE. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;

(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or

(3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this subchapter [~~chapter~~], a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Sec. 166.043 [~~672.013~~]. REEXECUTION OF DIRECTIVE. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032 [~~672.003~~], including reexecution after the declarant is diagnosed as having a terminal condition.

Sec. 166.044 [~~672.014~~]. EFFECT OF DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued a directive under this subchapter [~~chapter~~] does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining procedures are withheld or withdrawn from an insured qualified patient under this subchapter [~~chapter~~] does not legally impair or invalidate that person's life insurance policy.

(c) A physician, health facility, health provider, insurer, or health care service plan may not require a person to execute or issue a directive as a condition for obtaining insurance for health care services or receiving health care services.

(d) The fact that a person has executed or issued or failed to execute or issue a directive under this subchapter [~~chapter~~] may not be considered in any way in establishing insurance premiums.

Sec. 166.045 [672-015]. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES.

(a) A physician or health facility that, in good faith, causes life-sustaining procedures to be withheld or withdrawn from a qualified patient in accordance with this subchapter [chapter] is not civilly liable for that action [unless-negligent].

(b) A health professional, acting under the direction of a physician, who participates, in good faith, in withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this subchapter [chapter] is not civilly liable for that action [unless-negligent].

(c) A physician, or a health professional acting under the direction of a physician, who participates, in good faith, in withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this subchapter [chapter] is not criminally liable or guilty of unprofessional conduct as a result of that action [unless-negligent].

Sec. 166.046 [672-016]. LIMITATION OF LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE. (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is not civilly or criminally liable for failing to effectuate a qualified patient's directive.

(c) If an attending physician refuses to comply with a directive or treatment decision, the physician shall make a reasonable effort to transfer the patient to another physician.

Sec. 166.047 [672-017]. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this subchapter [chapter].

Sec. 166.048 [672-018]. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining procedures to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining procedures to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

Sec. 166.049 [672-019]. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining procedures under this subchapter [chapter] from a pregnant patient.

Sec. 166.050 [672-020]. MERCY KILLING NOT CONDONED. This subchapter [chapter] does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter [chapter].

Sec. 166.051 [672.021]. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This ~~subchapter~~ [chapter] does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining procedures in a lawful manner.

SECTION 1.04. Chapter 674, Health and Safety Code, is transferred to Subtitle H, Title 2, Health and Safety Code, is redesignated as Subchapter C, Chapter 166, Health and Safety Code, and is amended to read as follows:

**SUBCHAPTER C [CHAPTER 674]. OUT-OF-HOSPITAL
DO-NOT-RESUSCITATE ORDERS**

Sec. 166.081 [674.001]. DEFINITIONS. In this ~~subchapter~~ [chapter]:

(1) [~~"Attending physician" means the physician who has primary responsibility for a person's treatment and care.~~]

[(2) ~~"Board" means the Texas Board of Health.~~]

[(3) ~~"Cardiopulmonary resuscitation" includes a component of cardiopulmonary resuscitation.~~]

(2) [(4) ~~"Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of, and reasonable alternatives to, a proposed treatment decision.~~]

[(5) ~~"Declarant" means a person who has executed or issued an out-of-hospital do-not-resuscitate order under this chapter.~~]

[(6) ~~"Department" means the Texas Department of Health.~~]

[(7) ~~"DNR identification device" means an identification device specified by the board under Section 166.103 [674.023] that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter [chapter].~~]

(3) [(8) ~~"Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions for a person in accordance with Chapter 135, Civil Practice and Remedies Code.~~]

[(9) ~~"Emergency medical services" has the meaning assigned by Section 773.003.~~]

(4) [(10) ~~"Emergency medical services personnel" has the meaning assigned by Section 773.003.~~]

(5) [(11) ~~"Health care professionals" means physicians, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.~~]

(6) [(12) ~~"Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of, and reasonable alternatives to, a proposed treatment decision.~~]

[(13) ~~"Life-sustaining procedure" means a medical procedure, treatment, or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and, when applied to a person in a terminal condition, serves only to prolong the process of dying. The term does not include the administration of medication or the performance of a medical procedure considered to be necessary to provide comfort or care or to alleviate pain or the provision of water or nutrition.~~]

~~[(14)]~~ "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by the board under Section 166.083 ~~[674.003]~~, prepared and signed by the attending physician of a person who has been diagnosed as having a terminal condition, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining procedures:

- (i) cardiopulmonary resuscitation;
- (ii) endotracheal intubation or other means of advanced airway management;
- (iii) artificial ventilation;
- (iv) defibrillation;
- (v) transcutaneous cardiac pacing;
- (vi) the administration of cardiac resuscitation medications; and

(vii) other life-sustaining procedures specified by the board under Section 166.103(a) ~~[674.023(a)]~~; and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort or care or to alleviate pain or to provide water or nutrition.

~~(7)~~ ~~[(15)]~~ "Out-of-hospital setting" means any setting outside of a licensed acute care hospital in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, and vehicles during transport.

~~(8)~~ ~~[(16)]~~ "Physician" means a physician licensed by the Texas State Board of Medical Examiners or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

~~[(17)]~~ "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B ~~[Chapter 672]~~ to make a treatment decision for another person in the event the other person becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

~~(9)~~ ~~[(18)]~~ "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is comatose, incompetent, or otherwise mentally or physically incapable of communication under Section 166.088 ~~[674.008]~~.

~~(10)~~ ~~[(19)]~~ "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the board under Section 166.103 ~~[674.023]~~ for withholding cardiopulmonary resuscitation and certain other life-sustaining procedures by health care professionals acting in out-of-hospital settings.

~~[(20)]~~ ~~"Terminal condition" means an incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable medical judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the person's death.]~~

Sec. ~~166.082~~ [674.002]. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. (a) A competent person who has been diagnosed by a physician as having a terminal condition may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining procedures designated by the board.

(b) The declarant must sign the out-of-hospital DNR order in the presence of two witnesses, and those witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record.

(c) ~~[A witness must have the same qualifications as those provided by Section 672.003(c).~~

~~[(d)]~~ If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B [~~Chapter 672~~], the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b).

~~[(e)]~~ If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B [~~Chapter 672~~] designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

~~[(f)]~~ If the person is now incompetent but previously executed or issued a durable power of attorney for health care [~~in accordance with Chapter 135, Civil Practice and Remedies Code~~], designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

~~[(g)]~~ The board, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

~~[(h)]~~ An out-of-hospital DNR order is effective on its execution.

Sec. ~~166.083~~ [674.003]. FORM OF OUT-OF-HOSPITAL DNR ORDER.

(a) A written out-of-hospital DNR order shall be in the standard form specified by board rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by the board must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person, that the physician has diagnosed the person as having a terminal condition, and that the physician is directing health care

professionals acting in out-of-hospital settings not to initiate or continue certain life-sustaining procedures on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses and attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a durable power of attorney for health care, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) [~~674.002(d)~~] that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that the listed life-sustaining procedures should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least two qualified relatives of the person when the person does not have a legal guardian, proxy, or agent having a durable power of attorney for health care and is comatose, incompetent, or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relatives of the person are qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining procedures under Section 166.088 [~~674.008~~] and, based on the known desires of the person or a determination of the best interest of the person, direct that the listed life-sustaining procedures should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relatives of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the board determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The board may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter [chapter].

Sec. 166.084 [674.004]. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses. [The witnesses must possess the same qualifications as those provided by Section 672.003(c).]

(c) The attending physician and witnesses shall sign the out-of-hospital DNR order in the [that] place of the document provided by Section 166.083(b)(7) [674.003(b)(7)] and the attending physician shall sign the document in the place required by Section 166.083(b)(13) [674.003(b)(13)]. The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the witnesses shall sign that entry in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082 [674.002].

Sec. 166.085 [674.005]. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. The following persons may execute an out-of-hospital DNR order on behalf of a minor:

- (1) the minor's parents;
- (2) the minor's legal guardian; or
- (3) the minor's managing conservator.

Sec. 166.086 [674.006]. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter [chapter].

Sec. 166.087 [674.007]. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c) [672.003(d)], the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c) [672.003(d)], the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's present desire.

Sec. ~~166.088~~ [674.008]. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is comatose, incompetent, or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a durable power of attorney for health care may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent, the attending physician and at least two qualified relatives may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section ~~166.039(b)~~ [672.009(b)].

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses ~~[who possess the same qualifications that are required by Section 672.003(c)]~~.

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining procedures designated by the board.

Sec. ~~166.089~~ [674.009]. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section ~~166.090~~ [674.010].

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter [~~chapter~~].

(f) The out-of-hospital DNR order form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter [~~chapter~~] is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a durable power of attorney for health care who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter [~~chapter~~] can be carried out.

Sec. 166.090 [~~674.010~~]. DNR IDENTIFICATION DEVICE. (a) A person who has a valid out-of-hospital DNR order under this subchapter [~~chapter~~] may wear a DNR identification device around the neck or on the wrist as prescribed by board rule adopted under Section 166.103 [~~674.023~~].

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

Sec. 166.091 [~~674.011~~]. DURATION OF OUT-OF-HOSPITAL DNR ORDER. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section 166.092 [~~674.012~~].

Sec. 166.092 [~~674.012~~]. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any;

(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a durable power of attorney for health care who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;

(3) the declarant communicating the declarant's intent to revoke the order; or

(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a durable power of attorney for health care who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a durable power of attorney for health care who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the board and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter [~~chapter~~], a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Sec. 166.093 [~~674.013~~]. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. A declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section 166.082 [~~674.002~~], including reexecution or reissuance after the declarant is diagnosed as having a terminal condition.

Sec. 166.094 [~~674.014~~]. CONFLICT WITH NATURAL DEATH LAW [~~ACT~~] OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE. To the extent that an out-of-hospital DNR order conflicts with a directive or treatment decision executed or issued under Subchapter B [~~Chapter 672~~] or

a durable power of attorney for health care [~~executed or issued in accordance with Chapter 135, Civil Practice and Remedies Code~~], the instrument executed later in time controls.

Sec. ~~166.095~~ [674-015]. EFFECT OF OUT-OF-HOSPITAL DNR ORDER ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an out-of-hospital DNR order under this subchapter [~~chapter~~] does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board are withheld from an insured person under this subchapter [~~chapter~~] does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining the payability of benefits or the cause of death under the life insurance policy.

(c) A physician, health facility, health care provider, insurer, or health care service plan may not require a person to execute or issue an out-of-hospital DNR order as a condition for obtaining insurance for health care services or receiving health care services.

(d) The fact that a person has executed or issued or failed to execute or issue an out-of-hospital DNR order under this subchapter [~~chapter~~] may not be considered in any way in establishing insurance premiums.

Sec. ~~166.096~~ [674-016]. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board to be withheld from a person in accordance with this subchapter [~~chapter~~] is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board from a person in accordance with this subchapter [~~chapter~~] is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board from a person in accordance with this subchapter [~~chapter~~] is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board from a person in accordance with this subchapter [~~chapter~~] and rules adopted under this subchapter [~~chapter~~] is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Sec. 166.097 [~~674.017~~]. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is not civilly or criminally liable for failing to effectuate an out-of-hospital DNR order.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a durable power of attorney for health care and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

Sec. 166.098 [~~674.018~~]. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board from a person in accordance with this subchapter [~~chapter~~].

Sec. 166.099 [~~674.019~~]. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter [~~chapter~~]. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining procedures designated by the board to be withheld from the other person with the result that the other person's death is hastened.

Sec. 166.100 [~~674.020~~]. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board under this subchapter [~~chapter~~] from a person known by the responding health care professionals to be pregnant.

Sec. 166.101 [~~674.021~~]. MERCY KILLING NOT CONDONED. This subchapter [~~chapter~~] does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter [~~chapter~~].

Sec. 166.102 [~~674.022~~]. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter [~~chapter~~] does not impair or supersede any legal right or responsibility a person may have under a constitution, other

statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board.

Sec. 166.103 [~~674.023~~]. DUTIES OF DEPARTMENT AND BOARD.

(a) The board shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter [~~chapter~~], including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining procedures by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining procedures that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (vi) [~~Section 674.001(14)(A)(i) through (vi)~~]; and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted by the board under Subsection (a) are not effective until approved by the Texas State Board of Medical Examiners.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the board.

(d) The board by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter [~~chapter~~] or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the board from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the board for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

Sec. 166.104 [~~674.024~~]. RECOGNITION OF OUT-OF-HOSPITAL DNR ORDER EXECUTED OR ISSUED IN OTHER STATE. An out-of-hospital DNR order executed, issued, or authorized in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for purposes of this subchapter [~~chapter~~].

SECTION 1.05. Chapter 135, Civil Practice and Remedies Code, is transferred to Subtitle H, Title 2, Health and Safety Code, is redesignated as Subchapter D, Chapter 166, Health and Safety Code, and is amended to read as follows:

**SUBCHAPTER D [CHAPTER 135]. DURABLE
POWER OF ATTORNEY FOR HEALTH CARE**

Sec. 166.151 [~~135.001~~]. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(3) ~~["Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient:~~

~~[(4) "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care:~~

~~[(5) "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions as provided by this chapter:~~

~~[(6) "Health care decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition:~~

~~[(7)] "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.~~

(4) ~~[(8) "Physician" means:~~

~~[(A) a physician licensed by the Texas State Board of Medical Examiners; or~~

~~[(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state:~~

~~[(9)] "Principal" means an adult who has executed a durable power of attorney for health care.~~

(5) ~~[(10)] "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.~~

Sec. 166.152 ~~[135.002]~~. SCOPE AND DURATION OF AUTHORITY.

(a) Subject to this ~~subchapter~~ ~~[chapter]~~ or any express limitation on the authority of the agent contained in the durable power of attorney for health care, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent ~~[but for the principal's lack of capacity to make health care decisions]~~.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent ~~[lacks capacity to make health care decisions]~~.

(c) Notwithstanding any other provisions of this ~~subchapter~~ ~~[chapter]~~, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

(1) a durable power of attorney for health care is in effect; or

(2) the principal is competent ~~[has the capacity to make health care decisions]~~.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this subchapter [chapter], an agent may not consent to:

(1) voluntary inpatient mental health services;

(2) convulsive treatment;

(3) psychosurgery;

(4) abortion; or

(5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this subchapter [chapter] and delivery of the document to the agent, unless it is revoked as provided by this subchapter [chapter] or the principal becomes competent [~~regains the capacity to make health care decisions~~]. If the durable power of attorney includes an expiration date and on that date the principal becomes incompetent [~~lacks the capacity to make health care decisions~~], the power of attorney continues to be effective until the principal becomes competent [~~regains the capacity to make health care decisions~~] unless it is revoked as provided by this subchapter [chapter].

Sec. 166.153 [135.003]. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

(1) the principal's health care provider;

(2) an employee of the principal's health care provider unless the person is a relative of the principal;

(3) the principal's residential care provider; or

(4) an employee of the principal's residential care provider unless the person is a relative of the principal.

Sec. 166.154 [135.004]. EXECUTION AND WITNESSES. (a) The durable power of attorney for health care must be signed by the principal in the presence of at least two [~~or more~~] subscribing witnesses.

(b) A witness must possess the qualifications and be subject to the restrictions provided by Section 166.003. In addition, a witness may not, at the time of execution, be[:

[~~(1)~~] the agent[;

[~~(2)~~] the principal's health or residential care provider or the provider's employee;

[~~(3)~~] the principal's spouse or heir;

[~~(4)~~] a person entitled to any part of the estate of the principal on the death of the principal under a will or deed in existence or by operation of law; or

~~[(5) any other person who has any claim against the estate]~~ of the principal.

(c) The witnesses shall affirm that, at the time the durable power of attorney for health care was signed, the principal:

(1) ~~[appeared to be of sound mind to make a health care decision;~~
~~[(2)]~~ stated in the witness's presence that the principal was aware of the nature of the durable power of attorney for health care and that the principal was signing the document voluntarily and free from any duress; and
(2) ~~[(3)]~~ requested that the witness serve as a witness to the principal's execution of the document.

(d) If the principal is physically unable to sign, another person may sign the durable power of attorney for health care with the principal's name in the principal's presence and at the principal's express direction.

Sec. ~~166.155~~ ~~[135-005]~~. REVOCATION. (a) A durable power of attorney for health care is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to ~~whether the principal is competent or the principal's mental state;~~
~~competency, or capacity to make health care decisions];~~

(2) execution by the principal of a subsequent durable power of attorney for health care; or

(3) the divorce of the principal and spouse, if the spouse is the principal's agent.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a durable power of attorney for health care shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

Sec. ~~166.156~~ ~~[135-006]~~. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the durable power of attorney for health care.

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

Sec. ~~166.157~~ [135-007]. DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the durable power of attorney for health care, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

Sec. ~~166.158~~ [135-008]. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's durable power of attorney for health care shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter [chapter], and the durable power of attorney for health care.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter [chapter] or the durable power of attorney for health care shall inform the agent as soon as is reasonably possible. The agent may select another attending physician.

(d) This subchapter [chapter] may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Sec. ~~166.159~~ [135-009]. DISCRIMINATION RELATING TO EXECUTION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a durable power of attorney for health care;

(2) require a person to execute a durable power of attorney for health care before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a durable power of attorney for health care.

Sec. ~~166.160~~ [135-010]. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the durable power of attorney for health care and the provisions of this subchapter [chapter].

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the durable power of attorney for health care, the directives of the agent, and the provisions of this subchapter [~~chapter~~]; and

(2) does not constitute a failure to exercise due care in the provision of health care services.

(c) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a durable power of attorney for health care if the physician, provider, or person was not provided with a copy of the durable power of attorney for health care or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the durable power of attorney for health care has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Sec. 166.161 [~~135-011~~]. **LIABILITY FOR HEALTH CARE COSTS.** Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

Sec. 166.162 [~~135-012~~]. **NATURAL DEATH LAW** [~~ACT~~]. To the extent that a durable power of attorney for health care conflicts with a directive or treatment decision executed under Subchapter B [~~the Natural Death Act (Chapter 672, Health and Safety Code)~~], the instrument executed later in time controls. A physician who withholds or withdraws life-sustaining procedures from a principal with a terminal condition as required by an agent's directive is not required to comply with Subchapter B [~~the Natural Death Act~~].

Sec. 166.163 [~~135-013~~]. **ENFORCEABILITY OF DURABLE POWER OF ATTORNEY EXECUTED IN ANOTHER JURISDICTION.** This subchapter [~~chapter~~] does not limit the enforceability of a durable power of attorney for health care or similar instrument executed in another state or jurisdiction if the instrument complies with the law of the state or jurisdiction.

Sec. 166.164 [~~135-014~~]. **DISCLOSURE STATEMENT.** A durable power of attorney for health care is not effective unless the principal, before executing the durable power of attorney for health care, signs a statement that the principal has received a disclosure statement and has read and understood its contents.

Sec. 166.165 [~~135-015~~]. **FORM OF DISCLOSURE STATEMENT.** The disclosure statement must be in substantially the following form:

INFORMATION CONCERNING THE
DURABLE POWER OF ATTORNEY FOR HEALTH CARE
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE
SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE
IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer

capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the capacity to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent durable power of attorney for health care. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO ~~[OR MORE]~~ QUALIFIED WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- (1) the person you have designated as your agent;
- (2) ~~a person related to you by blood or marriage [your health or residential care provider or an employee of your health or residential care provider];~~
- (3) ~~a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law [your spouse];~~
- (4) your attending physician ~~[lawful heirs or beneficiaries named in your will or a deed]; [or]~~
- (5) ~~an employee of the attending physician;~~
- (6) ~~an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or~~
- (7) ~~a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death [creditors or persons who have a claim against you].~~

Sec. 166.166 [135-016]. FORM OF DURABLE POWER OF ATTORNEY.

The durable power of attorney for health care must be in substantially the following form:

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE
DESIGNATION OF HEALTH CARE AGENT.**

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone: _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This durable power of attorney for health care takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

**LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF
MY AGENT ARE AS FOLLOWS:** _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the

designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone: _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone: _____

The original of this document is kept at _____

The following individuals or institutions have signed copies:

Name: _____

Address: _____

Name: _____

Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior durable power of attorney for health care.

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this durable power of attorney for health care on _____ day of _____ 19 _____

at _____

(City and State)

(Signature)

(Print Name)

STATEMENT OF WITNESSES.

I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, ~~[that I believe the principal to be of sound mind;]~~ that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, that I am not the person appointed as agent by this document, and that I am not related to the principal by blood or marriage, I would not be entitled to any portion of the principal's estate on the principal's death, I am not the attending physician of the principal or an employee of the attending physician, and I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility [a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a health care facility.

~~[I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law].~~

Witness Signature: _____

Print Name: _____ Date: _____

Address: _____

Witness Signature: _____

Print Name: _____ Date: _____

Address: _____

Sec. ~~166.167~~ ~~[135.017]~~. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action in district court to request that the durable power of attorney for health care be revoked because the principal, at the time the durable power of attorney for health care was signed:

(1) was not competent ~~[of sound mind to make a health care decision]~~; or

(2) was under duress, fraud, or undue influence.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the district court orders otherwise.

Sec. ~~166.168~~ ~~[135.018]~~. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter ~~[chapter]~~ does not limit or impair any

legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Subsection (a), Section 313.003, Health and Safety Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal patients under Subchapter B, Chapter 166 [~~the terms of Chapter 672~~];

(2) a health care decision made under a durable power of attorney for health care under Subchapter D, Chapter 166 [~~Chapter 135, Civil Practice and Remedies Code~~], or under Chapter XII, Texas Probate Code;

(3) consent to medical treatment of minors under Chapter 32 [~~35~~], Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

SECTION 2.02. Subchapter A, Chapter 142, Health and Safety Code, is amended by adding Section 142.0145 to read as follows:

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

SECTION 2.03. Subsections (a) and (c), Section 241.059, Health and Safety Code, are amended to read as follows:

(a) The commissioner of health may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The commissioner shall assess an administrative penalty against a hospital that violates Section 166.004.

(c) The penalty may not exceed \$1,000 for each violation, except that the penalty for a violation of Section 166.004 shall be \$500. Each day of a continuing violation, other than a violation of Section 166.004, may be considered a separate violation.

SECTION 2.04. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.071 to read as follows:

Sec. 242.071. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. The commissioner shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004. Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be \$500 and a separate penalty may not be assessed for a separate day of a continuing violation.

SECTION 2.05. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Section 247.0455 to read as follows:

Sec. 247.0455. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a personal care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

SECTION 2.06. Subchapter C, Chapter 248, Health and Safety Code, is amended by adding Section 248.0545 to read as follows:

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a special care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

ARTICLE 3. TRANSITION AND EMERGENCY CLAUSE

SECTION 3.01. This Act takes effect January 1, 1998.

SECTION 3.02. The change in law made by this Act does not affect the validity of a document executed under Chapter 672 or 674, Health and Safety Code, or Chapter 135, Civil Practice and Remedies Code, before the effective date of this Act. A document executed before the effective date of this Act is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.

SECTION 3.03. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3.04. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1311

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1311** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF
BARRIENTOS
BIVINS
TRUAN
WENTWORTH

CUELLAR
RANGEL
SOLIS

On the part of the Senate On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to providing scholarships to students at institutions of higher education for certain out-of-state intern programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 56, Education Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. TEXAS-WASHINGTON, D.C., INTERN
SCHOLARSHIP PROGRAM

Sec. 56.221. PROGRAM NAME. The student financial assistance program authorized by this subchapter is known as the Texas-Washington, D.C., Intern Scholarship Program, and a grant awarded under this subchapter is known as a Texas-Washington, D.C., Intern Grant.

Sec. 56.222. PURPOSE. The purpose of this subchapter is to provide a grant of money to enable a qualified person enrolled in an institution of higher education to participate in a Washington, D.C., internship program.

Sec. 56.223. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Grant" means a Texas-Washington, D.C., Intern Grant awarded under this subchapter.

(3) "Institution of higher education" means:

(A) an institution of higher education as defined by Section 61.003; or

(B) a private or independent institution of higher education as defined by Section 61.003.

Sec. 56.224. ELIGIBLE PERSON. (a) To be eligible for a grant, a person must:

(1) be a Texas resident as defined by coordinating board rules;

(2) enroll for a full course load in an approved institution of higher education as determined by coordinating board rules;

(3) be from a low-income or middle-income family and establish financial need as defined by coordinating board rules;

(4) have applied for any available financial assistance; and

(5) have complied with any other administrative requirements adopted by the coordinating board under this subchapter.

(b) A person is not eligible to receive a grant if the person has been convicted of a felony, a crime involving moral turpitude, or an offense under Chapter 481, Health and Safety Code, or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or the applicable correctional facility or completed a period of probation ordered by a court and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to participate in the scholarship program.

Sec. 56.225. ADMINISTRATIVE AUTHORITY. For each academic year, the coordinating board shall provide grants in a number determined by the board, considering available funding for the year, to be awarded by approved institutions to eligible students. The coordinating board shall allocate the grants available to approved institutions in proportion to the total enrollment of each institution in the preceding academic year. The total amount of grants distributed by the coordinating board may not exceed the amount available for the Texas-Washington, D.C., Intern Scholarship Program from appropriations, gifts and grants or other funds.

Sec. 56.226. STANDARDS; AWARD OF GRANT. (a) The coordinating board shall prescribe standards and procedures for the awarding of grants by approved institutions.

(b) The standards must require an internship to meet at least the following standards to qualify for inclusion in the program:

(1) the internship must involve service with a public, private, or nonprofit agency in the District of Columbia or immediate vicinity and have some relationship to an activity of the federal government;

(2) the internship must require the student's attendance or participation at least four days a week;

(3) the internship must include substantive professional work, entry-level or above, providing the student with practical experience and consisting of not more than 20 percent clerical work; and

(4) the placement process for the internship must be designed to ensure an appropriate placement for each student.

(c) The standards for selection of students to receive grants must include at least the following factors:

(1) the socioeconomic background of the applicant, including the percentage by which the applicant's family is above or below any recognized measure of poverty, the applicant's household income, and the applicant's parents' level of education;

(2) the extent to which the applicant has been responsible for financing the applicant's own education;

(3) whether the applicant is the first generation of the applicant's family to attend an institution of higher education;

(4) the applicant's responsibilities while attending school, including whether the applicant has been employed, whether the applicant is a parent or has helped to raise children, or other similar factors;

(5) the region of the state in which the applicant resides or resided during high school;

(6) whether the applicant is or during high school was a resident of a rural or urban area or of a central city or suburban area;

(7) the applicant's leadership, employment history, and involvement in community activities;

(8) the applicant's personal statement of the purpose of the applicant's proposed internship and the role that internship would have on the applicant's education and personal and professional development;

(9) letters of recommendation supporting the applicant's application for an internship; and

(10) the applicant's personal interview.

(d) Each approved institution shall award the grants allocated to the institution according to the standards and applicable procedures prescribed by the coordinating board.

Sec. 56.227. PAYMENT OF GRANT: AMOUNT. On receipt of a copy of a student's grant application and certification from the applicable institution that the student has been awarded a grant, the coordinating board shall distribute the amount of the grant to the institution for disbursement to the student. The amount of a grant may not exceed the lesser of the student's documented financial need or \$2,000.

Sec. 56.228. TUITION WAIVER: ADMINISTRATIVE FEE. (a) If the recipient of a grant registers in a public or private institution of higher education other than the institution awarding the grant in order to complete the student's Washington, D.C., internship for credit at the institution awarding the grant, the institution awarding the grant shall exempt the student from the payment of tuition and required fees for the semester or term during which the student is enrolled in the other institution.

(b) The institution may charge a student who is exempt from the payment of tuition and fees under this section an administrative fee to cover the costs of administering the internship.

Sec. 56.229. ADOPTION AND DISTRIBUTION OF RULES. (a) The coordinating board shall adopt rules to administer this subchapter.

(b) The coordinating board shall distribute to each institution of higher education copies of all rules adopted under this subchapter.

Sec. 56.230. FUNDING. (a) The coordinating board may accept gifts and grants from any public or private source for the purposes of this subchapter.

(b) Texas-Washington, D.C., Intern Grants are payable only from gifts, grants, and funds appropriated by the legislature.

SECTION 2. (a) This Act takes effect September 1, 1999.

(b) The Texas Higher Education Coordinating Board shall make grants under the Texas-Washington, D.C., Intern Scholarship Program beginning

when the coordinating board determines sufficient funds are available to provide a reasonable number of grants, but not earlier than the 2000 spring semester.

(c) The coordinating board may not approve a private or independent institution of higher education to participate in the Texas-Washington, D.C., Intern Scholarship Program for an academic year before the third academic year after the academic year in which the coordinating board begins making grants as provided by Subsection (b) of this section.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 359

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 359** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN ARMBRISTER HARRIS MONCRIEF ZAFFIRINI On the part of the Senate	GRAY COLEMAN GOODMAN GREENBERG McREYNOLDS On the part of the House
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A BILL TO BE ENTITLED AN ACT

relating to the continuation and operation of the Department of Protective and Regulatory Services, the provision of services to children and families, and suits affecting the parent-child relationship; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 40.001, Human Resources Code, is amended by adding Subdivision (5) to read as follows:

(5) "Family preservation" includes the protection of parents and their children from needless family disruption because of unfounded accusations of child abuse or neglect. It does not include the provision of state social services for the rehabilitation of parents convicted of abusing or neglecting their children.

SECTION 2. Subsection (b), Section 40.002, Human Resources Code, is amended to read as follows:

(b) The department is the state agency with primary responsibility for:

(1) providing protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation;

(2) providing family support and family preservation services which respect the fundamental right of parents to control the education and upbringing of their children; and

(3) regulating child-care facilities and child-care administrators.

SECTION 3. Section 40.003, Human Resources Code, is amended to read as follows:

Sec. 40.003. SUNSET PROVISION. The Department of Protective and Regulatory Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2009 [1997].

SECTION 4. Subchapter A, Chapter 40, Human Resources Code, is amended by amending Section 40.004 and adding Section 40.0041 to read as follows:

Sec. 40.004. PUBLIC INTEREST INFORMATION [~~AND COMPLAINTS~~]. (a) The board [~~department~~] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board [~~department~~] and to speak on any issue under the jurisdiction of the department.

(b) The department shall prepare information of public interest describing the functions of the department [~~and the department's procedures by which complaints are filed with and resolved by the department~~]. The department shall make the information available to the public and appropriate state agencies.

~~[(c) The department by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate departmental personnel for the purpose of directing complaints to the department. The department may provide for that notification:~~

~~[(1) on each registration form, application, or written contract for services of a person regulated by the department;~~

~~[(2) on a sign prominently displayed in the place of business of each person regulated by the department; or~~

~~[(3) in a bill for a service provided by a person regulated by the department.~~

~~[(d) The department shall keep an information file about each complaint filed with the department relating to:~~

- ~~[(1) a license holder or entity regulated by the department; or~~
- ~~[(2) a service delivered by the department.~~

~~[(c) If a written complaint is filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.]~~

Sec. 40.0041. COMPLAINT PROCESS. (a) The department shall develop and implement a uniform process for receiving and resolving complaints against the department throughout the state. The process shall include:

(1) statewide procedures through which the public, consumers, and service recipients are informed:

(A) of the right to make a complaint against the department, including the mailing addresses and telephone numbers of appropriate department personnel responsible for receiving complaints and providing related assistance; and

(B) of the department's procedures for resolving a complaint, including the right to appeal a decision made at the local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

(3) a requirement that the department provide information by mail or telephone regarding the department's procedures for investigating and resolving a complaint to each person who makes a complaint; and

(4) a requirement that the department provide status information at least quarterly to a person with a pending complaint against the department, unless the information would jeopardize an undercover investigation.

(b) In addition to other appropriate methods, the department may provide the information specified by Subsection (a)(1):

(1) on each registration form, application, or written contract for services of a person regulated by the department;

(2) on a sign prominently displayed in the place of business of each person regulated by the department; or

(3) in a bill for service provided by a person regulated by the department.

(c) The department shall keep an information file about each complaint made against the department that the department has authority to resolve.

(d) The executive director shall develop a consistent, statewide process for addressing an appeal by a person dissatisfied with the resolution of a complaint at the regional level. The process shall include an opportunity for appeal of a complaint without the participation of the department's ombudsman office.

(e) The department shall develop and maintain a centralized tracking system to gather information concerning all complaints made against the department throughout the state. The department shall require its personnel to provide information regarding each complaint for inclusion in records maintained under the tracking system at the department's state headquarters, regardless of the location or level at which the complaint is initiated or

resolved. The department shall require at least the following information to be maintained for each complaint:

- (1) the date the complaint is received;
- (2) the name of the person making the complaint;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted by the department in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for each complaint determined by the department to require no corrective action, an explanation of the reason that the complaint was closed without action.

(f) The department shall periodically prepare and deliver reports to the board and the executive director regarding the number, type, and resolution of complaints made in the state against the department.

SECTION 5. Subchapter A, Chapter 40, Human Resources Code, is amended by adding Section 40.008 to read as follows:

Sec. 40.008. PROGRAM ACCESSIBILITY. The department shall comply with federal and state laws related to program and facility accessibility. The department shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

SECTION 6. Subsection (a), Section 40.021, Human Resources Code, is amended to read as follows:

(a) The board is composed of six members appointed by the governor with the advice and consent of the senate. The governor shall ~~annually~~ designate one member to be the presiding officer of the board to serve in that capacity at the pleasure of the governor.

SECTION 7. Section 40.022, Human Resources Code, is amended to read as follows:

Sec. 40.022. Restrictions on Board Appointment or Membership. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

- (1) is a person who is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds ~~[a substantial amount of money]~~ from the department;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by the department or that receives funds ~~[money]~~ from the department;
- (3) uses or receives a substantial amount of tangible goods, services, or money from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses ~~[incurred as a board member]~~, or as a client or a parent or guardian of a client receiving services from the department; or
- (4) is an employee, officer, or paid consultant of a trade association in a field under the jurisdiction of the department.

(b) In addition to the requirements of Subsection (a), a person is not eligible for appointment as a public member of the board if the person or the

person's spouse is registered, certified, or licensed by an occupational regulatory agency in a field under the jurisdiction of the department. [A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation in or for a profession related to the operation of the department may not serve as a member of the board.]

SECTION 8. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0225 to read as follows:

Sec. 40.0225. RESTRICTIONS ON BOARD MEMBERS AND EMPLOYEES. (a) An officer, employee, or paid consultant of a Texas trade association in a field under the jurisdiction of the department may not be a member of the board or an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in a field under the jurisdiction of the department may not be a member of the board and may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person may not serve as a member of the board or act as the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 9. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0226 to read as follows:

Sec. 40.0226. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the department and the board;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

SECTION 10. Subsection (b), Section 40.028, Human Resources Code, is amended to read as follows:

(b) The board shall:

(1) supervise the executive director's administration and enforcement of the laws of this state that impose duties on the department or board; and

(2) develop and implement policies that clearly separate the policymaking [respective] responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

SECTION 11. Section 40.029, Human Resources Code, is amended to read as follows:

Sec. 40.029. RULES. (a) The board shall propose and adopt rules to:

(1) ensure the department's compliance with state and federal law; and

(2) facilitate the implementation of departmental programs.

(b) The board shall propose and adopt rules that further the policy of family preservation.

SECTION 12. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0305 to read as follows:

Sec. 40.0305. STRATEGIC TECHNOLOGY STEERING COMMITTEE.

(a) The department shall establish a strategic technology steering committee within the department to evaluate major information technology project proposals.

(b) The steering committee shall consist of the department's information resources manager and other department employees designated by the executive director from senior management, information technology staff, and employees who are primary users of information resources. The information resources manager shall serve as presiding officer of the committee.

(c) The steering committee shall prioritize the department's major information technology project proposals and provide oversight and coordination of the projects.

(d) In evaluating major information technology project proposals, the steering committee shall:

(1) assess the major information needs of the department;

(2) define standard criteria for setting priorities for the department's information needs;

(3) forecast the returns to the department on project investments;

(4) evaluate the department's available information resources; and

(5) review, approve, and evaluate the status of projected costs and benefits related to project proposals.

(e) The steering committee shall make recommendations to the executive director based on the committee's performance of its duties.

SECTION 13. Section 40.032, Human Resources Code, is amended to read as follows:

Sec. 40.032. PERSONNEL. (a) The executive director may employ personnel necessary to administer the department's duties.

(b) The executive director or the executive director's designated representative shall develop an intradepartmental career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program~~[, one part of which]~~ shall require the intradepartmental posting of all ~~[non-entry-level]~~ positions concurrently with any public posting.

(c) The executive director or the executive director's designated representative shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The executive director or the executive director's designated representative shall provide to members of the board and to the department's employees, as often as is necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designated representative shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations ~~[guidelines]~~;

(3) procedures by which a determination can be made about the extent of ~~[significant]~~ underuse in the department's workforce of all persons for whom federal or state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations ~~[guidelines]~~ encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of ~~[significant]~~ underuse ~~[in the department's workforce of all persons for whom federal or state guidelines encourage a more equitable balance]~~.

(f) The policy statement required under Subsection (e) shall:

(1) be filed with the governor's office;

(2) ~~[;]~~ cover an annual period;

(3) ~~[, and]~~ be updated at least annually; and

(4) be reviewed by the Commission on Human Rights for compliance with Subsection (e)(1).

(g) The governor's office shall develop and deliver a biennial report to the legislature based on the information submitted under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 14. Section 40.051, Human Resources Code, is amended to read as follows:

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on the goals and priorities stated in the commission's coordinated strategic plan for health and human services. The department shall also develop its plan based on furthering the policy of family preservation.

SECTION 15. Section 40.052, Human Resources Code, is amended to read as follows:

Sec. 40.052. DUTIES RELATING TO DELIVERY OF SERVICES. The department shall:

(1) propose and implement service delivery standards for departmental programs;

(2) provide training and technical assistance to regional and local service providers;

(3) provide joint training on the investigation of reports of child abuse or neglect to department personnel and law enforcement personnel in appropriate state and local law enforcement agencies;

(4) develop and implement systems for monitoring departmental program performance and service delivery;

(5) [(4)] promote innovative service delivery at the local level; and

(6) [(5)] cooperate and coordinate as appropriate with other governmental entities in the delivery of services.

SECTION 16. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0522 and 40.0523 to read as follows:

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Sec. 40.0523. MULTIDISCIPLINARY TEAMS. (a) To the extent possible, the department shall establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The department may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) The department shall establish a process by which members of a multidisciplinary team are involved in the department's development and implementation of procedures relating to coordination of the department's child abuse or neglect services with services provided by other public and private agencies.

SECTION 17. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.0525 to read as follows:

Sec. 40.0525. SEPARATION OF INVESTIGATORY AND SERVICE DELIVERY FUNCTIONS. (a) To the extent feasible, the department shall separate the performance of investigations by department employees from the delivery of services to clients and their families. The department may take into consideration the needs and caseloads in the different programs and regions of the state in developing policies for the separation of the department's investigatory and service delivery functions.

(b) The department shall develop policies and procedures for the exchange of information between employees who are responsible for performing investigations and employees who are responsible for the delivery of services to clients and families.

(c) This section does not require the department to establish separate departments for investigations and service delivery.

SECTION 18. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0563, 40.0564, and 40.0565 to read as follows:

Sec. 40.0563. COUNTY OUTREACH PROGRAM. (a) The department shall develop and implement a standard statewide outreach program under which the department:

(1) informs each county of the availability of federal funds to pay costs of providing child protective services within the county; and

(2) provides technical assistance on request to a county seeking federal funds.

(b) In implementing the program, the department shall:

(1) designate local department personnel responsible for performing the functions specified in Subsection (a);

(2) designate a statewide coordinator responsible for coordinating the activities of local department personnel and developing methods of providing information to counties; and

(3) develop a database that:

(A) identifies department and county personnel involved with the outreach program; and

(B) contains information regarding the date and type of assistance provided by the department to each county.

(c) The department, in consultation with the Legislative Budget Board, shall ensure that a record is maintained of the amount of funding for child protective services that each county receives directly from the federal government.

Sec. 40.0564. DEPARTMENT FUNDS. All money paid to the department under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Sec. 40.0565. REPORT. The department shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must meet the reporting requirements, including reporting deadlines, applicable to financial reporting in the General Appropriations Act.

SECTION 19. Section 40.058, Human Resources Code, is amended to read as follows:

Sec. 40.058. Contracts and Agreements. (a) The department may enter into contracts or agreements with any person, including a federal, state, or other public or private agency, as necessary to perform any of the department's powers or duties.

(b) A contract for the purchase of program-related client services must include:

(1) clearly defined goals and outcomes that can be measured to determine whether the objectives of the program are being achieved;

(2) clearly defined sanctions or penalties for noncompliance with contract terms; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(c) The department shall monitor a contractor's performance under a contract for the purchase of program-related client services. In monitoring performance, the department shall:

(1) use a risk-assessment methodology to ensure compliance with financial and performance requirements under the contract; and

(2) obtain and evaluate program cost information to ensure that all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

(d) An agreement made under this section is not subject to Chapter 771 or 791, Government Code.

(e) This section does not prohibit the department from entering into a contract or agreement subject to Chapter 771 or 791, Government Code, for a purpose authorized in the applicable chapter.

SECTION 20. Section 40.061, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A department employee, a member of a multidisciplinary team established under Section 40.0523, or an authorized department volunteer who performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(c) This section does not provide immunity to a department employee who, in a suit affecting the parent-child relationship in which child abuse is alleged or that arises out of a child abuse investigation, in a criminal prosecution for an offense in which child abuse is an element, or in the preparation of the suit or prosecution:

- (1) commits or attempts to commit perjury;
- (2) fabricates or attempts to fabricate evidence;
- (3) knowingly conceals or intentionally withholds information that would establish that a person alleged to have committed child abuse did not commit child abuse; or
- (4) violates state or federal law in the investigation or prosecution of the suit.

SECTION 21. Section 40.062, Human Resources Code, is amended to read as follows:

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings, including a:

- (1) filing fee or fee for issuance or service of process imposed by Section 110.002 ~~[14.13]~~, Family Code, or by Section 51.317, 51.318(b)(2), or 51.319, Government Code;
- (2) transfer fee imposed by Section 110.002 ~~[14.06(1)]~~ or 110.005 ~~[14.13]~~, Family Code;
- (3) court reporter fee imposed by Section 51.601, Government Code;
- (4) judicial fund fee imposed by Sections 51.701 and 51.702, Government Code;
- (5) judge's fee imposed by Section 25.0008, 25.00263, or 25.0029, Government Code; or
- (6) cost or security fee imposed by Section 12 or 622, Probate Code.

SECTION 22. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.066 through 40.069 to read as follows:

Sec. 40.066. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Except as provided by Subsection (e), the department and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the executive director to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including giving of notice, that is required to be performed by the department or executive director.

(c) The administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall enter the final decision in the case after completion of the hearing.

(d) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting contested case hearings for the department. The department may pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(e) This section does not apply to a personnel grievance hearing involving a department employee.

Sec. 40.067. DELIVERY OF SERVICES IN AREAS BORDERING UNITED MEXICAN STATES. The department shall:

(1) study issues related to providing child and adult protective services in areas bordering the United Mexican States;

(2) develop a plan for providing those services in the most efficient manner; and

(3) pursue and enter into agreements for coordinated services, to the extent permissible under federal law, with the United Mexican States or any of its political subdivisions.

Sec. 40.068. LOCAL ACCOUNTS. (a) The department may establish and maintain local bank or savings accounts for a client of the department as necessary to administer funds belonging to the client or received in trust for or on behalf of the client.

(b) Funds maintained in an account for the benefit of a child who is under the managing conservatorship of the department may be used by the department for the support of the child, including the payment of foster care expenses, or may be paid to a person providing care for the child.

(c) The department shall spend funds in a guardianship of a client's estate in compliance with Chapter XIII, Texas Probate Code.

(d) Except as provided by Subsection (c), funds maintained in an account for the benefit of a client of the department may be used to provide care, including medical care, for the client.

Sec. 40.069. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT. (a) An applicant for temporary or permanent employment with the department whose employment or potential employment with the department involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;

2. Pleaded guilty to (whether or not resulting in a conviction);

3. Pleaded nolo contendere or no contest to;

4. Admitted;

5. Had any judgment or order rendered against me (whether by default or otherwise);

6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Been diagnosed as having or have been treated for any mental or emotional condition arising from;
9. Resigned under threat of termination of employment or volunteerism for;
10. Had a report of child abuse or neglect made and substantiated against me for; or
11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors;
17. Any type of child abduction; or,
18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE):

Signed _____

Date _____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____.

Signature of notarial officer _____.

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

SECTION 23. Section 42.002, Human Resources Code, is amended by amending Subdivisions (3) and (9) and adding Subdivisions (16) and (17) to read as follows:

(3) "Child-care facility" means a facility licensed or certified by the department to provide assessment, [that provides] care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(9) "Family home" means a home that [regularly] provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding [the caretaker's own] children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker [the caretaker's own], does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(16) "Children who are related to the caretaker" means children who are the children, grandchildren, siblings, great-grandchildren, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(17) "Regular care" means care that is provided at least four hours a day, three or more days a week, for more than nine consecutive weeks.

SECTION 24. Section 42.042, Human Resources Code, is amended by adding Subsection (p) to read as follows:

(p) The department by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The department may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

SECTION 25. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.0425, 42.0426, and 42.0427 to read as follows:

Sec. 42.0425. ASSESSMENT SERVICES. (a) The department by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by the department.

(b) The department by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

(c) In this section, "assessment services" means the determination of the placement needs of a child who requires substitute care.

Sec. 42.0426. TRAINING OF PERSONNEL. A licensed facility shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

Sec. 42.0427. PARENTAL VISITATION. All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

SECTION 26. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0505 to read as follows:

Sec. 42.0505. RENEWAL OF LICENSE. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required annual fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under the provisions of this section.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the department 1-1/2 times the required annual fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the department two times the required annual fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) At least 30 days before the expiration of a person's license, the department shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the department.

SECTION 27. Subsections (a), (b), and (c), Section 42.044, Human Resources Code, are amended to read as follows:

(a) An authorized representative of the department [division] may visit a facility or registered family home during operating hours to investigate, inspect, and evaluate.

(b) The department [division] shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The department [division] must investigate a facility when a complaint is received. The department shall investigate a registered family home when the department receives a complaint of abuse or neglect, as defined by Section 261.001, Family Code, of a child at the home. The department [division] representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

SECTION 28. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.0441, 42.0442, and 42.0443 to read as follows:

Sec. 42.0441. INSPECTION RESULTS. Immediately after completing a monitoring inspection under Section 42.044 of a licensed day-care center, licensed group day-care home, or registered family home, the authorized representative of the department shall review the results of the monitoring inspection with a representative of the facility and give the facility an opportunity to respond to the inspection results.

Sec. 42.0442. COORDINATION OF INSPECTIONS; ELIMINATION OF DUPLICATIVE INSPECTIONS. (a) The department shall coordinate monitoring inspections of licensed day-care centers, licensed group day-care homes, and registered family homes performed by another state agency to eliminate redundant inspections.

(b) The department shall form an interagency task force with the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission to develop an inspection protocol that will coordinate inspections by those agencies. The protocol must assign the required items for inspection by each agency and facilitate the sharing of inspection data and compliance history.

Sec. 42.0443. INSPECTION INFORMATION DATABASE. (a) If feasible using available information systems, the department shall establish a computerized database containing relevant inspection information on licensed day-care centers, licensed group day-care homes, and registered family homes from other state agencies and political subdivisions of the state.

(b) The department shall make the data collected by the department available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the department shall make the data directly available to the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission through electronic information systems. The department, the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

(c) The department may provide inspection data on licensed day-care centers, licensed group day-care homes, or registered family homes to the public if the department determines that providing inspection data enhances consumer choice with respect to those facilities.

SECTION 29. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0445 to read as follows:

Sec. 42.0445. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. (a) Before the department issues or renews a license, registration, or certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the

owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The department may adopt rules to implement this section.

SECTION 30. Section 42.046, Human Resources Code, is amended by amending Subsection (a) and the section heading to read as follows:

Sec. 42.046. [LICENSE] APPLICATION FOR LICENSE OR REGISTRATION. (a) An applicant for a license to operate a child-care facility or child-placing agency or for a registration to operate a family home shall submit to the department ~~[-division]~~ the appropriate fee prescribed by Section 42.054 ~~[of this code]~~ and a completed application on a form provided by the department ~~[division]~~.

SECTION 31. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0461 to read as follows:

Sec. 42.0461. PUBLIC NOTICE AND HEARING IN CERTAIN COUNTIES: RESIDENTIAL CHILD CARE. (a) Before the department may issue a license, other than a renewal license, or certificate to operate under Subchapter E for the operation or the expansion of the capacity of a foster group home or foster family home that is located in a county with a population of less than 300,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or of a child care institution, the applicant for the license, certificate, or expansion shall, at the applicant's expense:

(1) conduct a public hearing on the application in accordance with department rules after notifying the department of the date, time, and location of the hearing; and

(2) publish notice of the application in a newspaper of general circulation in the community in which the child-care services are proposed to be provided.

(b) The notice required by Subsection (a)(2) must be published at least 10 days before the date of the public hearing required by Subsection (a)(1) and must include:

(1) the name and address of the applicant;

(2) the address at which the child-care services are proposed to be provided;

(3) the date, time, and location of the public hearing;

(4) the name, address, and telephone number of the department as the licensing authority; and

(5) a statement informing the public that a person may submit written comments to the department concerning the application instead of or in addition to appearing at the public hearing.

(c) The department shall require a representative of the department to attend the public hearing in an official capacity for the purpose of receiving public comments on the application.

(d) Before issuing a license or certificate described by Subsection (a), the department shall consider:

(1) the amount of local resources available to support children proposed to be served by the applicant;

(2) the impact of the proposed child-care services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children proposed to be served by the applicant; and

(3) the impact of the proposed child-care services on the community and the effect on opportunities for social interaction for the children proposed to be served by the applicant.

(e) The department may deny the application if the department determines that:

(1) the community has insufficient resources to support children proposed to be served by the applicant;

(2) granting the application would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the increase would adversely affect the children proposed to be served by the applicant; or

(3) granting the application would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

(f) A child-placing agency that proposes to verify an agency home or agency group home that is located in a county with a population of less than 300,000 that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker shall:

(1) comply with the notice and hearing requirements imposed by Subsections (a) and (b); and

(2) after conducting the required public hearing, provide the department with information relating to the considerations specified in Subsection (d).

(g) The department may prohibit the child-placing agency from verifying the proposed agency home or agency group home on the same grounds that the department may deny an application under Subsection (e).

SECTION 32. Subsections (c) and (f), Section 42.052, Human Resources Code, are amended to read as follows:

(c) A family home that provides care for three or fewer children, excluding ~~[the caretaker's own]~~ children who are related to the caretaker, may register with the ~~department~~ ~~[division]~~. A family home that provides care for four or more children, excluding ~~[the caretaker's own]~~ children who are related to the caretaker, shall ~~[must]~~ register with the ~~department~~ ~~[division]~~. A registration remains valid until revoked or surrendered. The operator of a registered home must display the registration in a prominent place at the home.

(f) A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered with the ~~department~~ ~~[division]~~ under this chapter. Any public advertisement for a registered family home which uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

SECTION 33. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.057, 42.058, and 42.059 to read as follows:

Sec. 42.057. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In accordance with rules adopted by the department, the director, owner, or operator of a child-care facility or family home shall, when applying to operate a child-care facility or when registering a family home and at least once during each 24 months after receiving a license, registration, or certification of approval, submit to the department for use in conducting background and criminal history checks:

(1) the name of the director, owner, and operator of the facility or home and the name of each person employed at the facility or home; and

(2) the name of each resident of the home and any other person who will regularly or frequently be staying or working at the facility or home while children are being provided care.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(c) The department by rule shall require a child-care facility or family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES.

(a) The board may not adopt rules restricting competitive bidding or advertising by a license holder or registration holder except to prohibit false, misleading, or deceptive practices or to prevent a violation of this chapter.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's or registration holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder or registration holder; or

(4) restricts the license holder's or registration holder's advertisement under a trade name.

Sec. 42.059. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT WITH FACILITY OR REGISTERED FAMILY HOME.

(a) An applicant for temporary or permanent employment with a licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Been diagnosed as having or have been treated for any mental or emotional condition arising from;
9. Resigned under threat of termination of employment or volunteerism for;
10. Had a report of child abuse or neglect made and substantiated against me for; or
11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors;
17. Any type of child abduction; or,
18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed _____

Date _____

Subscribed and sworn to (or affirmed) before me this _____ day of _____.

Signature of notarial officer
(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

SECTION 34. Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.0705 to read as follows:

Sec. 42.0705. RANGE OF PENALTIES. The department shall revoke, suspend, or refuse to renew a license or registration, place on probation a person whose license or registration has been suspended, or reprimand a license holder or registration holder for a violation of this chapter or a rule of the board. If a license or registration suspension is probated, the department may require the license holder or registration holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit services to the areas prescribed by the department;

(3) continue or review professional education until the license holder or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; or

(4) take corrective action relating to the violation on which the probation is based.

SECTION 35. Section 42.071, Human Resources Code, is amended to read as follows:

Sec. 42.071. [LICENSE] SUSPENSION, EVALUATION, OR PROBATION OF LICENSE OR REGISTRATION. (a) The department [division] may suspend the license of a facility or the registration of a family home that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license or registration.

(b) The department [division] may suspend a facility's license or a family home's registration for a definite period rather than deny or revoke the license or registration if the department [division] finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license or registration suspension under this subsection, a facility or family home must suspend its operations and show that standards can be met within the suspension period.

(c) If the department [division] finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, the department [division] may schedule the facility or family home for evaluation or probation rather than suspend or revoke the facility's license or the family home's registration. The department [division] shall provide notice to the facility or family home of the evaluation or probation and of the items of noncompliance not later than the 10th day before the evaluation or probation period begins. The department [division] shall designate a period of not less than 30 days during which the facility or family home will remain under evaluation. During the evaluation or probation period, the facility or family home must correct the items that were in

noncompliance and report the corrections to the department ~~[division]~~ for approval.

(d) The department ~~[division]~~ shall revoke the license of a facility or the registration of a family home that does not comply with standards at the end of a license or registration suspension.

(e) The department ~~[division]~~ may suspend or revoke the license of a facility or the registration of a family home that does not correct items that were in noncompliance or that does not comply with required standards within the applicable evaluation or probation period.

SECTION 36. Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.0715 to read as follows:

Sec. 42.0715. COSTS CHARGED TO FACILITY OR FAMILY HOME.
The department may charge a facility or family home for reimbursement of the reasonable cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan for the facility or family home.

SECTION 37. Section 42.072, Human Resources Code, is amended to read as follows:

Sec. 42.072. LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION. (a) The department ~~[division]~~ may suspend, deny, [or] revoke, or refuse to renew the license, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license, registration, or certification. The department may revoke the probation of a person whose license or registration is suspended if the person violates a term of the conditions of probation.

(b) If the department proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings. [The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.]

(c) [A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.]

[(d) The denial or revocation of a license or certification and the appeal from that action are governed by the procedure for a contested case hearing under Chapter 2001, Government Code.]

[(e) A person whose license has been denied or revoked may challenge the decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the decision. The trial shall be de novo.]

~~[(f) Records of the hearing shall be kept for two years after a decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the hearing to a person appealing a license denial or revocation in district court.~~

~~[(g) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has obtained injunctive relief under Section 42.074 or civil penalties under Section 42.075 or the facility has been closed under Section 42.073.~~

~~[(h)] A person whose license, registration, or certification is revoked may not apply for any license, registration, or certification under this chapter before the second anniversary of the date on which the revocation takes effect by department or court order.~~

~~(d) The department by rule may provide for denial of an application or renewal for a licensed facility, for certification of approval of a facility, or for registering a family home or may revoke a facility's license or certification or a family home's registration based on findings of criminal history as a result of a background or criminal history check.~~

SECTION 38. Section 42.073, Human Resources Code, is amended to read as follows:

Sec. 42.073. EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR FAMILY HOME. (a) The department ~~[-division]~~ shall suspend a facility's license or a family home's registration and ~~[:]~~ order the immediate closing of the facility or family home ~~[-, and place the children attending or residing in the facility elsewhere]~~ if:

(1) the department ~~division]~~ finds the facility or family home is operating in violation of the applicable standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility or family home.

(b) An order suspending a license or registration and an order closing a facility or family home under this section is immediately effective on the date on which the ~~[license]~~ holder of the license or registration receives written notice or on a later date specified in the order.

(c) An order is valid for 10 days after the effective date of the order.

~~[(d) The suspension of a license and the closure of the facility and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.]~~

SECTION 39. Subsections (a) and (c), Section 42.074, Human Resources Code, are amended to read as follows:

(a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the department ~~division]~~ may file a suit in a district court in Travis County or in the county where the facility or family home is located for assessment and recovery of civil penalties under Section 42.075 ~~[of this code]~~, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(c) At the ~~department's~~ [division's] request, the attorney general or the county or district attorney of the county in which the facility or family home is located shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) ~~[of this section]~~.

SECTION 40. Subsection (a), Section 42.075, Human Resources Code, is amended to read as follows:

(a) A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility or family home by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility or unregistered family home.

SECTION 41. Section 42.076, Human Resources Code, is amended to read as follows:

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who operates a family home without a registration commits a Class B misdemeanor.

(c) A person who places a public advertisement for an unlicensed facility or an unregistered family home commits a Class C misdemeanor.

~~[(c) A person who places an advertisement for a registered family home in violation of Section 42.052(f) of this code commits a Class C misdemeanor.]~~

(d) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without assistance of the professional.

SECTION 42. Section 42.077, Human Resources Code, is amended to read as follows:

Sec. 42.077. NOTICE OF ACTION AGAINST FACILITY OR FAMILY HOME. (a) If the department revokes or suspends a facility's license or a family home's registration, the department shall publish notice of this action in a newspaper of general circulation in the county in which the facility or family home is located. The newspaper shall place the notice in the section in which advertisements for day-care services are normally published.

(b) If a person who operates a facility or family home that has had its license or registration revoked or suspended later applies for a new license or registration to operate the same facility or family home, the department shall charge the person an application fee in an amount necessary to reimburse the department for the cost of the notice relating to that facility or family home.

(c) The department shall pay for publication of the notice from funds appropriated to the department for licensing and regulating child-care facilities and for registering and regulating family homes and from appeal and application fees collected under Subsection (b) ~~[of this section]~~ and appropriated to the department.

(d) A facility or family home that has its license or registration revoked or suspended shall mail notification of this action by certified mail to the parents or guardian of the child served by the facility or family home. The facility or family home shall mail the notification within five days of the effective date of the ~~[license]~~ revocation or suspension of the license or registration.

SECTION 43. Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.078 to read as follows:

Sec. 42.078. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a facility or family home licensed or registered under this chapter that violates this chapter or a rule or order adopted under this chapter. Nonmonetary, administrative penalties or remedies including but not limited to corrective action plans, probation, and evaluation periods shall be imposed when appropriate before monetary penalties.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the number of children receiving care at the facility or family home at the time of the violation:

<u>Number of children</u>	<u>Maximum amount of penalty</u>
<u>20 or less</u>	<u>\$20</u>
<u>21-40</u>	<u>\$30</u>
<u>41-60</u>	<u>\$40</u>
<u>61-80</u>	<u>\$50</u>
<u>81-100</u>	<u>\$75</u>
<u>More than 100</u>	<u>\$100</u>

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) Monetary penalties shall not be assessed for violations of clerical errors or standards which do not clearly apprise the facility or family home of the action required by the standard.

(e) If the executive director determines that a violation has occurred, the director may issue a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(f) Within 14 days after the date the recommendation is issued, the executive director shall give written notice of the recommendation to the person owning or operating the facility. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) If the person accepts the determination and recommended penalty of the executive director or fails to respond to the notice in a timely manner, the executive director shall issue an order and impose the recommended penalty.

(i) If the person requests a hearing, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(j) The notice of the administrative law judge's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(k) Within 30 days after the date the administrative law judge's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(l) Within the 30-day period, a person who acts under Subsection (k)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(m) On receipt of a copy of an affidavit under Subsection (l)(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(n) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(o) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(p) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(q) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(r) A penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(s) All proceedings under this section are subject to Chapter 2001, Government Code.

SECTION 44. Chapter 43, Human Resources Code, is amended by adding Section 43.0042 to read as follows:

Sec. 43.0042. RECOGNITION OF LICENSE ISSUED BY ANOTHER STATE. (a) The department may waive any prerequisite to obtaining a license for an applicant:

(1) after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state; or

(2) after determining the applicant has a valid license from another state with which this state has a reciprocity agreement.

(b) The department may enter into an agreement with another state to permit licensing by reciprocity.

SECTION 45. Chapter 43, Human Resources Code, is amended by adding Section 43.0055 to read as follows:

Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES.

(a) The department may not adopt rules restricting competitive bidding or advertising by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the department may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

SECTION 46. Section 43.006, Human Resources Code, is amended to read as follows:

Sec. 43.006. Fees. The board may set and charge fees for administering an examination and issuing an initial license, ~~[-or]~~ renewal license, or provisional license in amounts necessary to cover the costs of administering this chapter.

SECTION 47. Chapter 43, Human Resources Code, is amended by adding Section 43.0081 to read as follows:

Sec. 43.0081. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant licensed in another state who applies for a license in this state. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a child-care administrator for at least two years in another state, the District of Columbia, a foreign country, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the department that demonstrates competence in the field of child-care administration; and

(3) be sponsored by a person licensed by the department under this chapter with whom the provisional license holder may practice under this section.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license. The department shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder passes the examination required by Section 43.004;

(2) the department verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The department must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day limit if the results of the license holder's examination have not been received by the department.

SECTION 48. Subsections (b) through (f), Section 43.009, Human Resources Code, are amended to read as follows:

(b) The board shall recognize, prepare, or administer continuing education programs for license holders. The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the department before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in the activities that require a license until the license has been renewed under the provisions of this section.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department one and [the required renewal fee and a fee that is] one-half times the required renewal [of the examination] fee [for the license].

(e) If a person's license has been expired for longer than 90 days but less than one year [two years], the person may renew the license by paying to the department two times the required [-all unpaid] renewal [fees and a] fee [that is equal to the examination fee for the license].

(f) If a person's license has been expired for one year [two years] or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. If the [However, the department may renew without reexamination an expired license of a] person [who] was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay to the department a fee that is equal to two times the required renewal [the examination] fee for the license.

SECTION 49. Section 43.010, Human Resources Code, is amended to read as follows:

Sec. 43.010. LICENSE REVOCATION, [OR] SUSPENSION, OR REFUSAL; REPRIMAND OR PROBATION. (a) The department shall revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation by the license holder of this chapter or a rule of the board.

(b) The department may revoke a license if the license holder is:

- (1) convicted of a felony;
- (2) convicted of a misdemeanor involving fraud or deceit;

(3) addicted to a dangerous drug or intemperate in the use of alcohol; or

(4) grossly negligent in performing duties as a child-care administrator.

(c) ~~[(b)]~~ The department shall suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule of the board.

(d) If a license suspension is probated, the department may require the license holder:

(1) to report regularly to the department on the conditions ~~[matters that are the basis]~~ of the probation;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the department in those areas in which improvement is a condition ~~[that are the basis]~~ of the probation.

SECTION 50. Chapter 43, Human Resources Code, is amended by adding Sections 43.0105 and 43.0106 to read as follows:

Sec. 43.0105. REVOCATION OF PROBATION. The department may revoke the probation of a license holder whose license is suspended if the license holder violates a term of the conditions of probation.

Sec. 43.0106. DISCIPLINARY HEARING. If the department proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

SECTION 51. Subdivision (2), Section 48.002, Human Resources Code, is amended to read as follows:

(2) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under[:

~~[(i)]~~ Section 21.08, Penal Code (indecent exposure)[;] or

~~[(ii)]~~ Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

SECTION 52. Subsection (a), Section 48.0215, Human Resources Code, as amended by Chapters 76, 303, and 1039, Acts of the 74th Legislature, 1995, is amended to read as follows:

(a) The department shall file an application under Section 682 or 875 [~~Chapter XIX~~], [~~of the~~] Texas Probate Code, to be appointed guardian of the person or [~~and~~] estate or both of an individual who is a minor, is a conservatee of the department, and, because of a physical or mental condition, will be substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult. If a less restrictive alternative to guardianship is available for an individual, the department shall pursue the alternative instead of applying for appointment as a guardian.

SECTION 53. Section 48.0215, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) As a last resort, the department may apply to be appointed guardian of the person or estate of an elderly or disabled person who is found by the department to be in a state of abuse, neglect, or exploitation, and who, because of a physical or mental condition, will be substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs. A representative of the department shall take the oath required by the Texas Probate Code on behalf of the department if the department is appointed guardian. If the department knows that an individual is willing and able to serve as the guardian, the department may inform the court of that individual's willingness and ability.

(e) The department may not be required to pay fees associated with the appointment of a guardian ad litem or attorney ad litem.

SECTION 54. Section 48.036, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as prescribed by Section 48.082, a person having [~~reasonable~~] cause to believe that an elderly or disabled person is in the state of abuse, exploitation, or neglect shall report the information required by Subsection (b) immediately to the department.

(c) The duty imposed by Subsection (a) applies without exception to a person whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health professional.

SECTION 55. Subchapter C, Chapter 48, Human Resources Code, is amended by adding Section 48.0362 to read as follows:

Sec. 48.0362. FALSE REPORT; PENALTY. A person commits an offense if the person knowingly or intentionally reports information as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section is a Class B misdemeanor.

SECTION 56. Section 48.037, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) The department by rule may assign priorities and prescribe investigative procedures for conducting investigations according to the degree of severity and immediacy of the alleged harm to the individual. Notwithstanding Subsection (a), the department's priorities and procedures may provide that an investigation is not required to be initiated

within 24 hours in all cases. This subsection does not apply to investigations conducted under Subchapter E.

SECTION 57. Section 48.081, Human Resources Code, is amended to read as follows:

Sec. 48.081. INVESTIGATION OF REPORTS IN MHMR FACILITIES AND IN COMMUNITY CENTERS. (a) The department shall receive and investigate reports of the abuse, neglect, or exploitation of an individual:

(1) receiving services in a facility operated by the Texas Department of Mental Health and Mental Retardation; or

(2) being provided services through a program under contract with a facility operated by the Texas Department of Mental Health and Mental Retardation.

(b) The department and the Texas Department of Mental Health and Mental Retardation shall develop joint rules to facilitate investigations in state mental health and mental retardation facilities.

(c) The department shall receive and investigate a report of the alleged abuse, neglect, or exploitation of an individual receiving services in a community center or from a program providing services under contract with a community center.

(d) The department shall forward to a state mental health or mental retardation facility, a community center, or a program providing mental health or mental retardation services under contract with such a facility or community center:

(1) a copy of any report the department receives relating to alleged or suspected abuse, neglect, or exploitation of an individual receiving services from that facility, community center, or program; and

(2) a copy of the department's investigation findings and report.

(e) The department and the Texas Department of Mental Health and Mental Retardation by joint rules shall establish procedures for resolving disagreements between the department and the Texas Department of Mental Health and Mental Retardation concerning the department's investigation findings. A confirmed investigation finding by the department may not be changed by a superintendent of a state mental health or mental retardation facility or a director of a community center.

(f) After completion of the appeals process, the department shall refer a complaint relating to an investigation conducted by the department under this section to the department's ombudsman office for appropriate action.

(g) ~~(f)~~ If the department's investigation under this section reveals that an elderly or disabled person has been abused by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, a copy of the investigation shall be submitted to the appropriate law enforcement agency.

(h) The department by rule may assign priorities to an investigation conducted by the department under this section. The primary criterion used by the department in assigning a priority must be the risk that a delay in the investigation will impede the collection of evidence.

(i) The department and the Texas Department of Mental Health and Mental Retardation shall jointly develop and implement a single system to

track reports and investigations under this section. To facilitate implementation of the system, the department and the Texas Department of Mental Health and Mental Retardation shall use appropriate methods of measuring the number and outcome of reports and investigations under this section.

(j) ~~(g)~~ In this section, "community center" has the meaning assigned by Section 531.002, Health and Safety Code.

SECTION 58. Subsections (b) through (f), Section 48.101, Human Resources Code, are amended to read as follows:

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of that hearing is served on the department or investigating state agency and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is the subject of a report of abuse, neglect, or exploitation;

(B) makes a report of abuse, neglect, or exploitation; or

(C) participates in an investigation of reported abuse, neglect, or exploitation.

(d) The department or investigating state agency by rule shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

(e) The department or investigating state agency may adopt rules relating to the release of information contained in the record of a deceased individual who was the subject of an investigation conducted by [to whom] the department or investigating state agency [has provided protective services]. The rules must be consistent with the purposes of this chapter and any applicable state or federal law.

(f) The department or investigating state agency may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department, state ~~[or the]~~ agency, or entity to properly execute its respective duties and responsibilities to provide services to elderly or disabled persons under this chapter or other law. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

SECTION 59. Subsection (a), Section 48.103, Human Resources Code, is amended to read as follows:

(a) A person, including a guardian and notwithstanding Section 675, Texas Probate Code, may not interfere with:

(1) an investigation by the department or by a protective services agency of alleged abuse, neglect, or exploitation of an elderly or disabled person; or

(2) the provision of protective services to an elderly or disabled person.

SECTION 60. Section 161.001, Family Code, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Chapter 264;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been adjudicated to be criminally responsible for the death or serious injury of a child;

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state; [or]

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than six months [one year], and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment; or

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child; and

(2) that termination is in the best interest of the child.

SECTION 61. Subchapter C, Chapter 161, Family Code, is amended by adding Section 161.2011 to read as follows:

Sec. 161.2011. CONTINUANCE; ACCESS TO CHILD. (a) The court shall not proceed to final trial in a suit to terminate the parent-child relationship during the time that any criminal charges filed against a parent whose rights are subject to termination in the suit are pending if the criminal charges are directly related to the grounds for which termination of the parent's rights are sought unless it determines that it is in the best interest of the child.

(b) Nothing in this subsection precludes the court from issuing appropriate temporary orders as authorized in this code.

(c) The court in which a suit to terminate the parent-child relationship is pending may render an order denying a parent access to a child if the parent is indicted for criminal activity that constitutes a ground for terminating the parent-child relationship under Section 161.001. The denial of access under this section shall continue until the date the criminal charges for which the parent was indicted are resolved and the court renders an order providing for access to the child by the parent.

SECTION 62. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.1085 to read as follows:

Sec. 201.1085. DISCRETIONARY APPOINTMENT OF MASTER FOR CHILD PROTECTION CASES. The presiding judge may appoint a master

for a court handling child protection cases if the court needs assistance in order to process the cases in a reasonable time.

SECTION 63. Section 261.001, Family Code, is amended by adding Subdivision (7) to read as follows:

(7) "Board" means the Board of Protective and Regulatory Services.

SECTION 64. Subchapter A, Chapter 261, Family Code, is amended by adding Section 261.004 to read as follows:

Sec. 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN. (a) The department shall prepare and disseminate statistics by county relating to the department's activities under this subtitle and include the information specified in Subsection (b) in an annual report available to the public.

(b) The department shall report the following information:

(1) the number of initial phone calls received by the department alleging abuse and neglect;

(2) the number of children reported to the department as having been abused and neglected;

(3) the number of reports received by the department alleging abuse or neglect and assigned by the department for investigation;

(4) of the children to whom Subdivision (2) applies:

(A) the number for whom the report was substantiated;

(B) the number for whom the report was unsubstantiated;

(C) the number for whom the report was determined to be false;

(D) the number who did not receive services from the department under a state or federal program;

(E) the number who received services, including preventative services, from the department under a state or federal program; and

(F) the number who were removed from the child's home during the preceding year;

(5) the number of families in which the child was not removed, but the child or family received services from the department;

(6) the number of children who died during the preceding year as a result of child abuse or neglect;

(7) of the children to whom Subdivision (5) applies, the number who were in foster care at the time of death;

(8) the number of child protective services workers responsible for report intake, assessment, or investigation;

(9) the response time by the department with respect to conducting an initial investigation of a report of child abuse or neglect;

(10) the response time by the department with respect to commencing services to families and children for whom an allegation of abuse or neglect has been made;

(11) the number of children who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child;

(12) the number of cases pursued by the department in each stage of the judicial process, including civil and criminal proceedings and the results of each proceeding; and

(13) the number of children for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child.

(c) The department shall compile the information specified in Subsection (b) for the preceding year in a report to be submitted to the legislature and the general public not later than February 1 of each year.

SECTION 65. Subsections (a), (b), and (c), Section 261.101, Family Code, are amended to read as follows:

(a) A person having cause to believe that a child's physical or mental health or welfare has been ~~[or may be]~~ adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has cause to believe that a child has been ~~[or may be]~~ abused or neglected ~~or that a child is a victim of an offense under Section 21.11, Penal Code and that the professional has cause to believe that the child has been abused as defined by Section 261.001 of this chapter,~~ the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected ~~or is a victim of an offense under Section 21.11, Penal Code.~~ A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, ~~[and] day-care employees, and employees of a clinic or health care facility that provides reproductive services.~~

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, ~~[and] a mental health professional, and an employee of a clinic or health care facility that provides reproductive services.~~

SECTION 66. Subsection (a), Section 261.105, Family Code, is amended to read as follows:

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the department or the designated agency.

SECTION 67. Subchapter B, Chapter 261, Family Code, is amended by adding Section 261.1055 to read as follows:

Sec. 261.1055. NOTIFICATION OF DISTRICT ATTORNEYS. (a) A district attorney may inform the department or designated agency that the district attorney wishes to receive notification of some or all reports of suspected abuse or neglect of children who were in the county at the time the report was made or who were in the county at the time of the alleged abuse or neglect.

(b) If the district attorney makes the notification under this section, the department or designated agency shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney as requested and the department or designated agency shall forward a copy of the reports to the district attorney on request.

SECTION 68. Section 261.107, Family Code, is amended to read as follows:

Sec. 261.107. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section [subsection] is a Class A [B] misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

(b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the report by restricting further access to the child by the person who made the report.

(c) The appropriate county prosecuting attorney shall be responsible for the prosecution of an offense under this section.

SECTION 69. Subsection (a), Section 261.201, Family Code, is amended to read as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

SECTION 70. Subsection (a), Section 261.301, Family Code, is amended to read as follows:

(a) With assistance from the appropriate state or local law enforcement agency, the [The] department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

SECTION 71. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3015 to read as follows:

Sec. 261.3015. FLEXIBLE RESPONSE SYSTEM. (a) In assigning priorities and prescribing investigative procedures based on the severity and immediacy of the alleged harm to a child under Section 261.301(d), the board by rule shall establish a flexible response system to allow the department to allocate resources by investigating serious cases of abuse and neglect and providing assessment and family preservation services in less serious cases.

(b) The classification under the flexible response system of a case may be changed as warranted by the circumstances.

(c) The department may implement the flexible response system by establishing a pilot program in a single department service region. The department shall study the results of the system in the region in determining the method by which to implement the system statewide.

SECTION 72. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3019 to read as follows:

Sec. 261.3019. PILOT PROGRAMS FOR INVESTIGATIONS OF CHILD ABUSE. (a) On or after September 1, 1997, but not later than March 1, 1998, the department shall enter into two agreements, one with a sheriff of a county with a population of not less than 500,000 and if necessary for jurisdictional purposes any other law enforcement agency, and one with a sheriff of a county with a population of 25,000 or less and if necessary for jurisdictional purposes any other law enforcement agency, under which the sheriff or law enforcement agency shall conduct investigations of reports of abuse. The commissioners court of a county that is eligible to establish a pilot program and that intends to do so shall inform the department of the county's interest.

(b) An agreement under this section shall:

(1) specify the respective roles of law enforcement and department staff in the investigative process;

(2) provide for the department to assist in the removal of a child under Chapter 262 as necessary for the protection of the child;

(3) provide for the use of any available children's advocacy center or multidisciplinary team under Subchapter E, Chapter 264;

(4) include provisions for the reimbursement by the department from available state and federal funds of the costs incurred by the sheriff or law enforcement agency in conducting an investigation of a report of abuse;

(5) develop a plan for the transfer of calls received by the state child abuse hotline to the local law enforcement agency;

(6) develop a plan to be submitted to the department that specifies the manner in which the county's law enforcement agency shall handle investigations, investigator training, and the processing of reports made to the local agency;

(7) permit an additional contract with other appropriate local law enforcement agencies, if necessary for jurisdictional purposes, to implement the pilot program; and

(8) contain provisions the department and the sheriff and law enforcement determine to be necessary and appropriate.

(c) The department may provide advice and technical assistance to the county to ensure that the county complies with state and federal law in implementing and operating the pilot program.

(d) Under each pilot program, the department shall provide to a participating county law enforcement agency:

(A) information regarding:

(i) the average number of child abuse cases that are typically investigated; and

(ii) staff and investigator training; and
(B) other assistance necessary to adequately implement and fund the pilot program.

(e) Under the pilot program, the commissioners court shall establish an independent local citizens review board composed of seven volunteers who represent the community, including members who have experience in matters relating to child abuse and including one member who is licensed as a psychologist, one member licensed as a medical or health professional, and one member who is a licensed or ordained priest, rabbi, or officer of a religious organization. A member of a review board may not be an employee of or contract with any participating law enforcement agency or the department. The citizens review board shall prepare and make available to the public on an annual basis a report containing a summary of the activities of the board.

(f) The commissioners court may apply for any grants and research other sources of funding for the county's participation in the pilot program.

(g) An agreement under Subsection (a) is not required to provide for:

(1) the investigation of abuse alleged to have occurred in a facility or home regulated by the department under Chapter 42, Human Resources Code; or

(2) an investigation conducted under Section 48.081, Human Resources Code, or Section 261.404.

(h) The state auditor shall perform an audit and evaluation of the pilot program under this section. In preparing the evaluation, the auditor shall consider any report prepared by a citizens review board established under Subsection (e). The auditor shall report, not later than March 1, 2001, the results of the audit and evaluation to the presiding officers of both houses of the 77th Legislature and to the governor. The report must include an evaluation of the strengths and weaknesses of the pilot program and a recommendation about the feasibility of expanding the pilot program statewide.

(i) The department shall adopt rules necessary to perform the department's duties under this section.

(j) This section expires September 1, 2001.

SECTION 73. Section 261.302, Family Code, is amended by adding Subsection (e) to read as follows:

(e) An interview with a child alleged to be a victim of physical abuse or sexual abuse shall be audiotaped or videotaped unless the investigating agency determines that good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this subsection. The fact that the investigating agency failed to audiotape or videotape an interview is admissible at the trial of the offense that is the subject of the interview.

SECTION 74. Section 261.311, Family Code, is amended to read as follows:

Sec. 261.311. NOTICE OF REPORT ~~[INTERVIEW—OR EXAMINATION]~~. (a) ~~When [If,]~~ during an investigation ~~of a report of suspected child abuse or neglect[;]~~ a representative of the department or the designated agency conducts an interview with or an examination of a child, the department or designated agency shall make a reasonable effort before 24 hours after the time of the interview or examination to notify each parent of the child and the child's legal guardian, if one has been appointed, ~~of the nature of the allegation and of the fact that the interview or examination was conducted.~~

(b) ~~If a report of suspected child abuse or neglect is administratively closed by the department or designated agency as a result of a preliminary investigation that did not include an interview or examination of the child, the department or designated agency shall make a reasonable effort before the expiration of 24 hours after the time the investigation is closed to notify each parent and legal guardian of the child of the disposition of the investigation.~~

(c) ~~The notice required by Subsection (a) or (b) is not required if the department or agency determines that the notice is likely to endanger the safety of the child who is the subject of the report, the person who made the report, or any other person who participates in the investigation of the report.~~

(d) ~~The notice required by Subsection (a) or (b) may be delayed at the request of a law enforcement agency if notification during the required time would interfere with an ongoing criminal investigation.~~

SECTION 75. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.315 to read as follows:

Sec. 261.315. REMOVAL OF CERTAIN INVESTIGATION INFORMATION FROM RECORDS. (a) ~~At the conclusion of an investigation in which the department determines that the person alleged to have abused or neglected a child did not commit abuse or neglect, the department shall notify the person of the person's right to request the department to remove information about the person's alleged role in the abuse or neglect report from the department's records.~~

(b) ~~On request under Subsection (a) by a person whom the department has determined did not commit abuse or neglect, the department shall remove information from the department's records concerning the person's alleged role in the abuse or neglect report.~~

(c) ~~The board shall adopt rules necessary to administer this section.~~

SECTION 76. Subsection (a), Section 262.109, Family Code, is amended to read as follows:

(a) The department or other agency must give written notice as prescribed by this section to ~~each parent of the child or to the child's [parent;]~~ conservator[;] or legal guardian when a representative of the Department of Protective and Regulatory Services or other agency takes possession of a child under this chapter.

SECTION 77. Subsection (c), Section 262.201, Family Code, is amended to read as follows:

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall:

- (1) issue an appropriate temporary order under Chapter 105; and
- (2) inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 78. Section 262.201, Family Code, is amended by adding Subsection (e) as as follows:

(e) The court shall place a child removed from the child's custodial parent with the child's noncustodial parent or with a relative of the child if placement with the noncustodial parent is inappropriate, unless placement with the noncustodial parent or a relative is not in the best interest of the child.

SECTION 79. Subchapter C, Chapter 262, Family Code, is amended by adding Section 262.2015 to read as follows:

Sec. 262.2015. ACCELERATED TRIAL ON THE MERITS. The court may accelerate the trial schedule to result in a final order for a child under the care of the department at an earlier date than provided by Subchapter C, Chapter 263, if the court:

(1) orders at the conclusion of the full adversary hearing that the child may not be placed in the child's home;

(2) finds that the child is a victim of serious bodily injury or sexual abuse; and

(3) finds that there is probable cause to believe that a party to the suit has engaged in conduct against the child that would constitute an offense under the following provisions of the Penal Code:

(A) Section 21.11 (indecentcy with a child);

(B) Section 22.011 (sexual assault);

(C) Section 22.02 (aggravated assault);

(D) Section 22.021 (aggravated sexual assault);

(E) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(F) Section 22.041 (abandoning or endangering child);

(G) Section 25.02 (prohibited sexual conduct);

(H) Section 43.25 (sexual performance by a child); or

(I) Section 43.26 (possession or promotion of child pornography).

SECTION 80. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.006 to read as follows:

Sec. 263.006. WARNING TO PARENTS. At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the court has rendered a temporary order appointing the department as temporary managing conservator, the court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 81. Section 263.201, Family Code, is amended to read as follows:

Sec. 263.201. STATUS HEARING; TIME. Not later than the 60th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child ~~[of a full adversary hearing under Chapter 262]~~, the court shall hold a status hearing to review the child's status and the permanency plan developed for the child.

SECTION 82. The heading to Subchapter D, Chapter 263, Family Code, is amended to read as follows:

SUBCHAPTER D. PERMANENCY ~~[REVIEW]~~ HEARINGS

SECTION 83. Subsections (a) and (b), Section 263.301, Family Code, are amended to read as follows:

(a) Notice of a permanency ~~[review]~~ hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing.

(b) The following persons are entitled to at least 10 days' notice of a permanency hearing ~~[to review a child's placement]~~ and are entitled to present evidence and be heard at the hearing:

- (1) the department;
- (2) the foster parent or director of the group home or institution where the child is residing;
- (3) each parent of the child;
- (4) the managing conservator or guardian of the child; ~~[and]~~
- (5) an attorney ad litem appointed for the child under Chapter 107;
- (6) a volunteer advocate appointed for the child under Chapter 107; and

(7) any other person or agency named by the court to have an interest in the child's welfare.

SECTION 84. Section 263.302, Family Code, is amended to read as follows:

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. The ~~[court may dispense with the attendance of the]~~ child shall attend each permanency hearing unless the court specifically excuses the child's attendance. Failure by the child to attend a hearing does not affect the validity of an order rendered at the [at a placement review] hearing.

SECTION 85. Subchapter D, Chapter 263, Family Code, is amended by adding Section 263.3025 to read as follows:

Sec. 263.3025. PERMANENCY PLAN. (a) The department shall prepare a permanency plan for a child for whom the department has been appointed temporary managing conservator. The department shall give a copy of the plan to each person entitled to notice under Section 263.301(b) not later than the 10th day before the date of the child's first permanency hearing.

(b) In addition to the requirements of the department rules governing permanency planning, the permanency plan must contain the information required to be included in a permanency progress report under Section 263.303.

(c) The department shall modify the permanency plan for a child as required by the circumstances and needs of the child.

SECTION 86. Section 263.303, Family Code, is amended to read as follows:

Sec. 263.303. PERMANENCY PROGRESS ~~[STATUS]~~ REPORT.

(a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency ~~[review]~~ hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, and the child's volunteer advocate a permanency progress ~~[status]~~ report unless the court orders a different period for providing the report ~~[or orders that a report is not required for a specific hearing].~~

(b) The permanency progress ~~[status]~~ report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

(A) identify the date for dismissal of the suit under this chapter;

(B) provide:

(i) the name of any person entitled to notice under Chapter 102 who has not been served;

(ii) a description of the efforts by the department or another agency to locate and request service of citation; and

(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;

(C) evaluate [all relevant information concerning each of the guidelines under this chapter and] the parties' compliance with temporary orders and with the service plan;

(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter; and

(F) [(2) recommend one of the following actions:

[(A) that the child be returned to the child's home and that the suit be dismissed;

[(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;

[(C) that the child remain in substitute care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;

[(D) that the child remain in substitute care for a specified period and that termination of parental rights be sought under this code;

[(E) that a child who has resided in substitute care for at least 18 months be placed or remain in permanent or long-term substitute care because of the child's special needs or circumstances; or

[(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances; and

[(3)] with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's or other agency's report filed under Subsection (b). A response must be filed not later than the third day before the date of the hearing.

SECTION 87. Section 263.304, Family Code, is amended to read as follows:

Sec. 263.304. INITIAL PERMANENCY [REVIEW] HEARING; TIME. Not later than the 180th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [of the conclusion of the full adversary hearing under Chapter 262], the court shall hold a permanency hearing to review the status of, and permanency plan for, the [a] child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter [in substitute care in the court's jurisdiction, including the time for the completion of the plan and the projected date for the achievement of the child's permanency plan].

SECTION 88. Section 263.305, Family Code, is amended to read as follows:

Sec. 263.305. SUBSEQUENT PERMANENCY [REVIEW] HEARINGS. A subsequent permanency hearing before entry of a final order [Subsequent review hearings] shall be held [not earlier than 5 1/2 months and] not later than the 120th day [seven months] after the date of the last permanency hearing in the suit. For [unless, for] good cause shown or on the court's own motion [by a party], the court may order more frequent hearings [an earlier hearing is approved by the court].

SECTION 89. Section 263.306, Family Code, is amended to read as follows:

Sec. 263.306. PERMANENCY [REVIEW] HEARINGS: PROCEDURE. At each permanency [review] hearing the court shall [determine]:

(1) identify [the identity of] all persons or parties present at the hearing or those given notice but failing to appear;

(2) review the efforts of the department or another agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

(C) obtaining the assistance of a parent in providing information necessary to locate an absent parent;

(3) return the child to the parent or parents if [whether] the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(4) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(5) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;

(6) evaluate the parties' compliance with temporary orders and
~~[(3) the extent to which the child's parents have taken the necessary~~
~~actions or responsibilities toward achieving the plan goal during the period of~~
~~the service plan and the extent to which the department or other authorized~~
~~agency has provided assistance to the parents as provided in] the service plan;~~

(7) determine ~~[(4)]~~ whether:

(A) the child continues to need substitute care;

(B) [and whether] the child's current placement is appropriate
for meeting the child's needs; and

(C) other plans or services are needed to meet the child's
special needs or circumstances;

(8) if the child is placed in institutional care, determine whether
efforts have been made to ensure placement of the child in the least restrictive
environment consistent with the best interest and special needs of the child;

(9) if the child is 16 years of age or older, order services that are
needed to assist the child in making the transition from substitute care to
independent living if the services are available in the community;

(10) determine plans, services, and further temporary orders
necessary to ensure that a final order is rendered before the date for dismissal
of the suit under this chapter; and

(11) determine the date for dismissal of the suit under this chapter
and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

~~[(5) a date for achieving the child's permanency plan;~~

~~[(6) if the child has been in substitute care for not less~~
~~than 18 months, the future status of the child and the appropriateness of the~~
~~date by which the child may return home and whether to render further~~
~~appropriate orders;~~

~~[(7) if the child is in substitute care outside the state, whether the~~
~~out-of-state placement continues to be appropriate and in the best interest of~~
~~the child;~~

~~[(8) whether the child's parents are willing and able to provide the~~
~~child with a safe environment without the assistance of a service plan and, if~~
~~so, return the child to the parents;~~

~~[(9) whether the child's parents are willing and able to provide the~~
~~child with a safe environment with the assistance of a service plan and, if so,~~
~~return the child or continue the placement of the child in the child's home~~
~~under the department's or other agency's supervision;~~

~~[(10) whether the child's parents are presently unwilling or unable to~~
~~provide the child with a safe environment, even with the assistance of~~
~~a service plan, and, if so, order the child to remain under the department's or~~
~~other agency's managing conservatorship for a period of time specified by~~
~~the court;~~

~~[(11) whether a long-term substitute care placement is in the child's~~
~~best interest because of the child's special needs or circumstances and, if so,~~
~~begin a long-term substitute care placement and if the child is placed in~~

~~institutional care, whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;~~

~~[(12) whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;~~

~~[(13) whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;~~

~~[(14) whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department managing conservator and, if so, direct the department or authorized agency to institute further proceedings; and~~

~~[(15) whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.]~~

SECTION 90. Chapter 263, Family Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. FINAL ORDER

FOR CHILD UNDER DEPARTMENT CARE

Sec. 263.401. DISMISSAL AFTER ONE YEAR; EXTENSION.

(a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) On or before the time described by Subsection (a) for the dismissal of the suit, the court may extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described by Subsection (a), if the court has continuing jurisdiction of the suit and the appointment of the department as temporary managing conservator is in the best interest of the child. If the court grants an extension, the extension order must also:

(1) schedule the new date for dismissal of the suit; and

(2) make further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit.

(c) If the court grants an extension, the court shall render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension.

(d) For purposes of this section, a final order is an order that:

(1) requires that a child be returned to the child's parent;

(2) names a relative of the child or another person as the child's managing conservator;

(3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or

(4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Sec. 263.402. RETURN OF CHILD TO PARENT OR PLACEMENT WITH RELATIVE. (a) Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

(1) finds that retaining jurisdiction under this section is in the best interest of the child;

(2) orders the department to return the child to the child's parent or to place the child with a relative of the child;

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit.

(c) If a child placed with a parent or relative under this section must be moved from that home by the department before the dismissal of the suit or the rendering of a final order, the court shall, at the time of the move, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved under this subsection, whichever date is later.

(d) If the court renders an order under this section, the court must include in the order specific findings regarding the grounds for the order.

Sec. 263.403. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR WITHOUT TERMINATING PARENTAL RIGHTS. (a) The court may render a final order appointing the department as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1) appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and

(2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

(b) In determining whether the department should be appointed as managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

(1) that the child will reach 18 years of age in not less than three years;

(2) that the child is 12 years of age or older and has expressed a strong desire against termination or being adopted;

(3) that the child has special medical or behavioral needs that make adoption of the child unlikely; and

(4) the needs and desires of the child.

[Sections 263.404-263.500 reserved for expansion]

SUBCHAPTER F. PLACEMENT REVIEW HEARINGS

Sec. 263.501. PLACEMENT REVIEW AFTER FINAL ORDER. (a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a placement review hearing at least once every six months until the child becomes an adult.

(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a placement review hearing at least once every six months until the date the child is adopted or the child becomes an adult.

(c) Notice of a placement review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to each person entitled to notice of the hearing.

(d) The following are entitled to not less than 10 days' notice of a placement review hearing:

- (1) the department;
- (2) the foster parent or director of the group home or institution in which the child is residing;
- (3) each parent of the child;
- (4) each possessory conservator or guardian of the child;
- (5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; and
- (6) any other person or agency named by the court as having an interest in the child's welfare.

(e) The court may dispense with the requirement that the child attend a placement review hearing.

Sec. 263.502. PLACEMENT REVIEW REPORT. (a) Not later than the 10th day before the date set for a placement review hearing, the department or other authorized agency shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).

(b) For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.

(c) The placement review report must:

- (1) evaluate whether the child's current placement is appropriate for meeting the child's needs;
- (2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;
- (3) identify the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living if the services are available in the community;
- (4) identify other plans or services that are needed to meet the child's special needs or circumstances; and
- (5) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. At each placement review hearing, the court shall determine whether:

(1) the child's current placement is appropriate for meeting the child's needs;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances; and

(5) the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

SECTION 91. Section 264.009, Family Code, is amended to read as follows:

Sec. 264.009. LEGAL REPRESENTATION OF DEPARTMENT.

(a) Except as provided by Subsection (b), ~~(c), or (f)~~, in any action under this code [title], the department shall be represented in court by the county[:

~~[(1) prosecuting] attorney [who represents the state in criminal cases in the district or county court] of the county where the action is brought, unless the district attorney or criminal district attorney of the county elects to provide representation[; or~~

~~[(2) attorney general].~~

(b) If the county attorney, district attorney, or criminal district attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action.

(c) If the attorney general is unable to represent the department in an action under this code, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this code.

(e) The department may employ attorneys to represent the department in an action under this code.

(f) In a county with a population of 2.8 million or more, in an action under this code, the department shall be represented in court by the attorney who represents the state in civil cases in the district or county court of the county where the action is brought. If such attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action [In a county with a population of 2,800,000 or more, in an action under this title, the department shall be represented in court by the:

~~[(1) attorney who represents the state in civil cases in the district or county court of the county where the action is brought; or~~

~~[(2) attorney general].~~

SECTION 92. Subchapter B, Chapter 264, Family Code, is amended by amending Section 264.106 and adding Section 264.1061 to read as follows:

Sec. 264.106. CONTRACTS FOR SUBSTITUTE CARE SERVICES ~~[CONTRACT RESIDENTIAL CARE]~~. (a) The department shall:

(1) assess the need for substitute care services throughout the state; and

(2) contract with substitute care providers only to the extent necessary to meet the need for those services.

(b) Before contracting with a substitute care provider, the department shall determine whether:

(1) community resources are available to support children placed under the provider's care; and

(2) the appropriate public school district has sufficient resources to support children placed under the provider's care if the children will attend public school.

(c) In addition to the requirements of Section 40.058(b), Human Resources Code, a contract with a substitute care provider must include provisions that:

(1) enable the department to monitor the effectiveness of the provider's services; and

(2) authorize the department to terminate the contract or impose sanctions for a violation of a provision of the contract that specifies performance criteria.

(d) In determining whether to contract with a substitute care provider, the department shall consider the provider's performance under any previous contract for substitute care services between the department and the provider.

(e) In this section, "substitute care provider" means a person who provides residential care for children for 24 hours a day, including:

(1) a child-care institution, as defined by Section 42.002, Human Resources Code;

(2) a child-placing agency, as defined by Section 42.002, Human Resources Code;

(3) a foster group home or foster family home, as defined by Section 42.002, Human Resources Code; and

(4) an agency group home or agency home, as defined by Section 42.002, Human Resources Code, other than an agency group home, agency home, or a foster home verified or certified by the department [make reasonable efforts to ensure that the expenditure of appropriated funds to purchase contract residential care for children is allocated to providers on a fixed monthly basis if:

[(1) the allocation is cost effective; and

[(2) the number, type, needs, and conditions of the children served are reasonably constant.

[(b) This section does not apply to the purchase of care in a foster family home].

Sec. 264.1061. FOSTER PARENT PERFORMANCE. The department shall monitor the performance of a foster parent who has been verified by the department in the department's capacity as a child-placing agency. The method under which performance is monitored must include the use of objective criteria by which the foster parent's performance may be assessed. The department shall include references to the criteria in a written agreement between the department and the foster parent concerning the foster parent's services.

SECTION 93. Subchapter B, Chapter 264, Family Code, is amended by adding Section 264.1075 to read as follows:

Sec. 264.1075. USE OF ASSESSMENT SERVICES. Before placing a child in substitute care, the department shall use assessment services provided by a child-care facility or child-placing agency in accordance with Section 42.0425, Human Resources Code, to determine the appropriate substitute care for the child.

SECTION 94. Subchapter C, Chapter 264, Family Code, is amended by adding Sections 264.206 and 264.207 to read as follows:

Sec. 264.206. SEARCH FOR ADOPTIVE PARENTS. (a) The department shall begin its efforts to locate qualified persons to adopt a child, including persons registered with the adoptive parent registry under Subchapter B, at the time the department's permanency plan for the child becomes the termination of the parent-child relationship and adoption of the child.

(b) The department shall report to the court in which the department petitions for termination of the parent-child relationship on the child's adoptability and the department's search for prospective adoptive parents for the child, including information relating to the department's efforts to work with licensed child-placing agencies.

Sec. 264.207. DEPARTMENT PLANNING AND ACCOUNTABILITY. (a) The department shall adopt policies that provide for the improvement of the department's services for children and families, including policies that provide for conducting a home study within four months after the date an applicant is approved for an adoption and documenting the results of the home study within 30 days after the date the study is completed. The policies adopted under this section must:

(1) be designed to increase the accountability of the department to individuals who receive services and to the public; and

(2) assure consistency of services provided by the department in the different regions of the state.

(b) To accomplish the goals stated in Subsection (a), the department shall:

(1) establish time frames for the initial screening of families seeking to adopt children;

(2) provide for the evaluation of the effectiveness of the department's management-level employees in expeditiously making permanent placements for children;

(3) establish, as feasible, comprehensive assessment services in various locations in the state to determine the needs of children and families served by the department;

(4) emphasize and centralize the monitoring and promoting of the permanent placement of children receiving department services;

(5) establish goals and performance measures in the permanent placement of children;

(6) seek private licensed child-placing agencies to place a child in the department's managing conservatorship who has been available for permanent placement for more than 90 days;

(7) provide information to private licensed child-placing agencies concerning children under Subdivision (6);

(8) provide incentives for a private licensed child-placing agency that places a child, as defined by Section 162.301, under Subdivision (6);

(9) encourage foster parents to be approved by the department as both foster parents and adoptive parents;

(10) address failures by the department's service regions in making permanent placements for children in a reasonable time; and

(11) require the department's service regions to participate in the Texas Adoption Resources Exchange.

SECTION 95. Section 264.514, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A medical examiner or justice of the peace notified of a death of a child under Section 264.513 shall hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death is unexpected or the result of abuse or neglect. An inquest is not required under this subchapter if the child's death is expected and is due to a congenital or neoplastic disease. A death caused by an infectious disease may be considered an expected death if:

(1) the disease was not acquired as a result of trauma or poisoning;

(2) the infectious organism is identified using standard medical procedures; and

(3) the death is not reportable to the Texas Department of Health under Chapter 81, Health and Safety Code.

(c) In this section, the terms "abuse" and "neglect" have the meaning assigned those terms by Section 261.001.

SECTION 96. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. (a)(1) In this subsection the terms "child," "child-care facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) The Department of Protective and Regulatory Services ~~shall~~ is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, or certification under Chapter 42, Human Resources Code;

(B) an owner or employee of or an applicant for employment by a child-care facility or family home licensed, registered, or certified under that chapter;

(C) a resident of a registered family home, but not a child in the home's care or a parent of the child;

(D) an applicant for a position with the Department of Protective and Regulatory Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) ~~a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;~~

~~[(F) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;~~

~~[(G)]~~ an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Protective and Regulatory Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) ~~[(H)]~~ a volunteer or applicant volunteer with the Department of Protective and Regulatory Services;

~~[(G) [(H) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;~~

~~[(J)]~~ a person providing or applying to provide adoptive or foster care for children in the care of the Department of Protective and Regulatory Services and other adults living with that person in the residence in which the child will reside;

(H) ~~[(K)]~~ a Department of Protective and Regulatory Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) ~~[(L)]~~ a person who is the subject of a report the department receives alleging that the person has abused or neglected a child, an elderly person, or a person with a disability, provided that report has proven to have merit;

(J) ~~[(M)]~~ a relative providing or applying to provide in-home care for a child in the care of the Department of Protective and Regulatory Services and other adults living with that relative in the residence in which the child will reside; or

(K) ~~[(N)]~~ a person providing child care for a child who is in the care of the Department of Protective and Regulatory Services and who is or will be receiving adoptive, foster, or in-home care;

~~[(O) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected; or~~

~~[(P) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America].~~

(3) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America; or

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information.

(4) Subject to Section 411.087, the department shall:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); or

(B) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2).

(5) The Department of Protective and Regulatory Services may not use the authority granted under this section to harass an employee or volunteer. The Board of Protective and Regulatory Services shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) ~~[(4)]~~ Criminal history record information obtained by the Department of Protective and Regulatory Services under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Protective and Regulatory Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (2) ~~[(5)]~~.

(7) ~~[(5)]~~ The Department of Protective and Regulatory Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subsection ~~(a)(2)(E)~~ ~~[(a)(2)(G)]~~ who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child and the person who is the subject of the criminal history record information, if the Department of Protective and Regulatory Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child or adult.

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the department, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c) The Department of Protective and Regulatory Services may charge an organization or person that requests criminal history record information under Subsection (a)(3) ~~[(a)(2)]~~ a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

SECTION 97. Section 531.001, Government Code, is amended to read as follows:

Sec. 531.001. DEFINITIONS. In this chapter:

(1) "Caseload standards" means the minimum and maximum number of cases that an employee can reasonably be expected to perform in a normal work month based on the number of cases handled by or the number of different job functions performed by the employee.

(2) "Commission" means the Health and Human Services Commission.

(3) ~~[(2)]~~ "Commissioner" means the commissioner of health and human services.

(4) ~~[(3)]~~ "Health and human services agencies" includes the:

(A) Interagency Council on Early Childhood Intervention Services;

(B) Texas Department on Aging;

(C) Texas Commission on Alcohol and Drug Abuse;

(D) Texas Commission for the Blind;

(E) Texas Commission for the Deaf and Hard of Hearing [impaired];

(F) Texas Department of Health;

(G) Texas Department of Human Services;

(H) Texas Juvenile Probation Commission;

(I) Texas Department of Mental Health and Mental Retardation;

(J) Texas Rehabilitation Commission; and

(K) Department of Protective and Regulatory Services.

(5) "Professional caseload standards" means caseload standards that are established or are recommended for establishment for employees of health and human services agencies by management studies conducted for health and human services agencies or by an authority or association, including the Child Welfare League of America, the National Eligibility Workers Association, the National Association of Social Workers, and associations of state health and human services agencies.

SECTION 98. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.047 to read as follows:

Sec. 531.047. SUBSTITUTE CARE PROVIDER OUTCOME STANDARDS. (a) The commission, after consulting with representatives from the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, and the Texas Department of Mental Health and Mental Retardation, shall by rule adopt result-oriented standards that a provider of substitute care services for children under the care of the state must achieve.

(b) A health and human services agency that purchases substitute care services must include the result-oriented standards as requirements in each substitute care service provider contract.

(c) A health and human services agency may provide information about a substitute care provider, including rates, contracts, outcomes, and client information, to another agency that purchases substitute care services.

SECTION 99. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.048 to read as follows:

Sec. 531.048. CASELOAD STANDARDS. (a) After considering the recommendations of the caseload standards advisory committees under Section 531.049(e), the commissioner may establish caseload standards and other standards relating to caseloads for each category of caseworker employed by the Texas Department of Human Services or the Department of Protective and Regulatory Services.

(b) In establishing standards under this section, the commissioner shall:

(1) ensure the standards are based on the actual duties of the caseworker;

(2) ensure the caseload standards are reasonable and achievable;

(3) ensure the standards are consistent with existing professional caseload standards;

(4) consider standards developed by other states for caseworkers in similar positions of employment; and

(5) ensure the standards are consistent with existing caseload standards of other state agencies.

(c) Subject to the availability of funds appropriated by the legislature, the commissioner of human services and the executive director of the Department of Protective and Regulatory Services shall use the standards established by the commissioner under this section to determine the number of personnel to assign as caseworkers for their respective agencies.

(d) Subject to the availability of funds appropriated by the legislature, the Texas Department of Human Services and the Department of Protective and Regulatory Services shall use the standards established by the commissioner to assign caseloads to individual caseworkers employed by those agencies.

(e) The commissioner shall include a recommendation made to the commissioner by a caseload standards advisory committee under Section 531.049(e) in the strategic plan of the agency that is the subject of the recommendation.

(f) Nothing in this section may be construed to create a cause of action.

SECTION 100. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.049 to read as follows:

Sec. 531.049. CASELOAD STANDARDS ADVISORY COMMITTEES.

(a) A caseload standards advisory committee is established in the Department of Protective and Regulatory Services, and a caseload standards advisory committee is established in the Texas Department of Human Services.

(b) A caseload standards advisory committee is composed of 10 employees appointed by the commissioner who are unit supervisors or caseworkers in the agency in which the committee is established. To the extent practicable, a caseload standards advisory committee must include a unit supervisor or caseworker from each program area of the agency in which the committee is established.

(c) The commissioner shall make appointments to a caseload standards advisory committee from a list submitted by the commissioner or the executive director of the agency in which the committee is established.

(d) Members of a caseload standards advisory committee serve at the pleasure of the commissioner.

(e) Each caseload standards advisory committee shall:

(1) review professional caseload standards and other caseload standards and recommendations the committee considers appropriate and recommend to the commissioner minimum and maximum caseloads for each category of caseworker employed by the agency in which the advisory committee is established; and

(2) advise and make recommendations to the commissioner on granting the agency in which the advisory committee has been established the authority to waive certain reporting standards when the caseload of a caseworker employed by the agency exceeds the maximum number established by the commissioner under Section 531.048(a).

(f) The commissioner shall dissolve a caseload standards advisory committee if the commissioner determines that the caseload standards advisory committee is no longer necessary to develop and implement the standards required under Section 531.048(a).

(g) Except as otherwise provided by this section, a caseload standards advisory committee is subject to Article 6252-33, Revised Statutes.

(h) Nothing in this section may be construed to create a cause of action.

SECTION 101. Section 700, Texas Probate Code, is amended to read as follows:

Sec. 700. Oath of Guardian. (a) The guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) A representative of the Department of Protective and Regulatory Services shall take the oath required by Subsection (a) of this section if the department is appointed guardian.

SECTION 102. Subsection (e), Article 49.10, Code of Criminal Procedure, is amended to read as follows:

(e) A justice of the peace shall order an autopsy performed on a body if;

(1) the justice determines that an autopsy is necessary to determine or confirm the nature and cause of death;

(2) the deceased was a child younger than six years of age and the death is determined ~~[was reported]~~ under Section 264.514 ~~[Chapter 264]~~, Family Code, to be unexpected or the result of abuse or neglect; or

(3) directed to do so by the district attorney, criminal district attorney, or, if there is no district or criminal district attorney, the county attorney.

SECTION 103. (a) Representatives from each state agency that purchases substitute care services for children under the state's care shall meet to:

(1) assess the total need for substitute care services in this state; and

(2) develop and implement a competitive bidding process to purchase substitute care services.

(b) Except as provided by Subsection (c) of this section, each state agency must use the competitive bidding process created under Subsection (a) of this section to purchase substitute care services.

(c) A state agency is not required to use the competitive bidding process to purchase:

(1) foster family care services;

(2) substitute care services in a geographic area of this state that has a shortage of service providers; or

(3) specialized substitute care services if there is a shortage of providers of the specialized services.

(d) The state agency representatives shall meet and develop the competitive bidding process for purchasing substitute care services as soon as possible after the effective date of this Act.

(e) Not later than September 1, 1998, the Department of Protective and Regulatory Services shall develop and implement a pilot program under which the department purchases substitute care services through a competitive bidding process. The department must design the pilot program to produce a substitute care system that is outcome-based and that uses the department's outcome measures.

SECTION 104. (a) Sections 263.308 and 263.309, Family Code, are repealed.

(b) Section 42.050, Human Resources Code, as amended by Chapter 1052, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

SECTION 105. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 1997.

(b) The Board of Protective and Regulatory Services shall adopt rules necessary to administer the changes in law made by this Act not later than November 1, 1997.

(c) The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the Board of Protective and Regulatory Services do not affect the entitlement of a member serving on the board immediately before September 1, 1997, to continue to carry out the functions of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 1997. This Act does not prohibit a person who is a member of the board on September 1, 1997, from

being reappointed to the board if the person has the qualifications required for a member under Chapter 40, Human Resources Code, as amended by this Act.

(d) The executive director of the Department of Protective and Regulatory Services shall appoint the members of the strategic technology steering committee established by Section 40.0305, Human Resources Code, as added by this Act, not later than November 1, 1997.

(e) Except as provided by Section 111 of this Act and Subsection (f) of this section, the change in law made by this Act relating to a disciplinary proceeding or contested case of the Department of Protective and Regulatory Services applies only to a proceeding initiated on or after the effective date of this Act.

(f) The change in law made by this Act relating to the imposition of a penalty or other disciplinary action on a person or entity regulated by the Department of Protective and Regulatory Services applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(g) The change in law made by this Act relating to the qualifications for a license issued by the Department of Protective and Regulatory Services applies only to an application for a license made on or after the effective date of this Act. An application made before the effective date of this Act is governed by the law in effect on the date the application was made, and the former law is continued in effect for that purpose.

(h) The change in law made by this Act regarding the termination of the parent-child relationship applies only to a suit affecting the parent-child relationship in which termination of the parent-child relationship is sought filed on or after the effective date of this Act. A suit affecting the parent-child relationship in which termination of the parent-child relationship is sought filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 106. (a) The change in law made by this Act relating to a contested case hearing conducted by the State Office of Administrative Hearings on behalf of the Department of Protective and Regulatory Services applies only to a hearing that begins on or after January 1, 1998. Notwithstanding any other provision of this Act, a hearing that begins before that date is governed by the law in effect at the time the hearing begins, and that law is continued in effect for that purpose.

(b) The executive director of the Department of Protective and Regulatory Services and the chief administrative law judge of the State Office of Administrative Hearings may agree to transfer contested cases pending before the Department of Protective and Regulatory Services to the State Office of Administrative Hearings before January 1, 1998.

SECTION 107. Section 42.0461, Human Resources Code, as added by this Act, applies only to an application for a license or for authorization to expand capacity under a license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

SECTION 108. (a) The change in law made by Sections 81 and 82 and Sections 84 through 94 of this Act takes effect January 1, 1998.

(b) Except as provided by Subsection (c) of this section, Sections 81 and 82 and Sections 84 through 94 of this Act apply to a pending suit affecting the parent-child relationship regardless of whether the suit was commenced before, on, or after the effective date of this Act.

(c) If the Department of Protective and Regulatory Services has been appointed temporary managing conservator of a child before January 1, 1998, the court shall at the first hearing conducted on or after that date under Chapter 263, Family Code, establish a date for dismissal of the suit not later than the second anniversary of the date of the hearing, unless the court has rendered a final order before the dismissal date.

SECTION 109. The change in law made by this Act to Section 261.101, Family Code, applies only to a report of child abuse or neglect made on or after the effective date of this Act. A report made before that date is governed by the law in effect on the date the report was made, and the former law is continued in effect for that purpose.

SECTION 110. The changes in law made by this Act to Article 49.10, Code of Criminal Procedure, and Section 264.514, Family Code, take effect September 1, 1997, and apply only to a death of a child younger than six years of age that occurs on or after September 1, 1997. A death of a child that occurs before September 1, 1997, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 111. The Health and Human Services Commission shall adopt the rules required by Section 531.047, Government Code, as added by this Act, not later than January 1, 1998.

SECTION 112. An agency that purchases substitute care services shall review the effectiveness of the result-oriented standards adopted under Section 531.047, Government Code, as added by this Act, and report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, and Legislative Budget Board not later than January 31, 1999.

SECTION 113. (a) A caseload standards advisory committee shall make its recommendations under Subsection (e), Section 531.049, Government Code, as added by this Act, not later than March 1, 1998.

(b) The commissioner of health and human services shall adopt rules prescribing the standards required by Subsection (a), Section 531.048, Government Code, as added by this Act, not later than September 1, 1999.

SECTION 114. Not later than September 15, 1997, each agency or subdivision of the state that inspects child-care facilities shall submit a copy of the inspection form used by the agency or subdivision to the Department of Protective and Regulatory Services for the department's use in implementing Section 42.0441, Human Resources Code, as added by this Act.

SECTION 115. Not later than February 1, 1998, the Department of Protective and Regulatory Services, the Texas Department of Human Services, the Texas Department of Health, and the Texas Workforce Commission shall report the recommendations for the protocol for coordinated inspections provided by Section 42.0442, Human Resources

Code, as added by this Act, to their respective governing boards or commissions. The implementation of the protocol shall begin not later than June 1, 1998.

SECTION 116. The Department of Protective and Regulatory Services shall establish a working group to coordinate the processing of child protection cases. The working group shall consist of representatives from the Office of Court Administration, the Texas Supreme Court, and district and county attorneys' offices. The working group shall report its recommendations to the Texas Supreme Court not later than September 1, 1998. After considering the recommendations of the working group, the Texas Supreme Court shall adopt rules regarding the processing of child protection cases.

SECTION 117. If, before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary to implement a provision, the state agency shall request the waiver or authorization and may delay implementing the provision until the waiver or authorization is granted.

SECTION 118. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2850**

Senator Galloway submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2850** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLOWAY

LINDSAY

NIXON

On the part of the Senate

WILLIAMS

DENNY

CHRISTIAN

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

BILLS AND RESOLUTION SIGNED

The President announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

HB 331, HB 623, HB 1370, HB 1410, HB 1716, HB 1843, HB 1868, HB 1891, HB 2189, HB 2297, HB 2383, HB 2644, HB 3545, HCR 316

SENATE BILL 1107 WITH HOUSE AMENDMENTS

Senator Duncan called **SB 1107** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1107** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the provision of financial assistance to survivors of certain law enforcement officers, firefighters, and others.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 615.003, Government Code, is amended to read as follows:

Sec. 615.003. APPLICABILITY. This chapter applies only to eligible survivors of the following individuals:

(1) an individual elected, appointed, or employed as a peace officer by the state or a political subdivision of the state under Article 2.12, Code of Criminal Procedure, or other law;

(2) a paid probation officer appointed by the director of a community supervision and corrections department who has the duties set out in Section 2 and the qualifications set out in Section 5, Article 42.131, Code of Criminal Procedure, or who was appointed in accordance with prior law;

(3) a parole officer employed by the pardons and paroles division of the Texas Department of Criminal Justice who has the duties set out in Section 2 and the qualifications set out in Section 19, Article 42.18, Code of Criminal Procedure, or in prior law;

(4) a paid jailer;

(5) a member of an organized police reserve or auxiliary unit who regularly assists peace officers in enforcing criminal laws;

(6) a member of the class of employees of the institutional division of the Texas Department of Criminal Justice formally designated as custodial personnel under Section 615.006 by the Texas Board of Criminal Justice or its predecessor in function;

(7) a jailer or guard of a county jail who is appointed by the sheriff and who:

(A) performs a security, custodial, or supervisory function over the admittance, confinement, or discharge of prisoners; and

(B) is certified by the Texas Commission on Law Enforcement Officer Standards and Education;

(8) a juvenile correctional employee of the Texas Youth Commission;

(9) an employee of the Texas Department of Mental Health and Mental Retardation who:

(A) works at the department's maximum security unit; or

(B) performs on-site services for the Texas Department of Criminal Justice;

(10) an who is employed by the state or a political or legal subdivision and is subject to certification by the Texas Commission on Fire Protection;

(11) an individual employed by the state or a political or legal subdivision whose principal duties are aircraft crash and rescue fire fighting; ~~or~~

(12) a member of an organized volunteer fire-fighting unit that:

(A) renders fire-fighting services without remuneration;

(B) consists of not fewer than 20 active members, a majority of ~~whom~~ ~~which~~ are present at each meeting; and

(C) conducts a minimum of two drills each month, each two hours long; or

~~(13) an individual who:~~

~~(A) performs emergency medical services or operates an ambulance;~~

~~(B) is employed by a political subdivision of the state; and~~

~~(C) is qualified as an emergency medical technician or at a higher level of training under Section 773.047, 773.048, or 773.049, Health and Safety Code.~~

SECTION 2. Section 615.021, Government Code, is amended to read as follows:

Sec. 615.021. ELIGIBLE SURVIVORS. (a) A survivor of an individual listed under Section 615.003 is eligible for the payment of assistance under this chapter if:

(1) the listed individual died in the course of the individual's duty performed in the individual's position as described by Section 615.003 as a result of exposure to a risk:

(A) that is inherent in the duty; or

(B) to which the general public is not customarily exposed; and

(2) the survivor is:

(A) the surviving spouse of the listed individual;

(B) a minor child of the listed individual;

(C) a surviving dependent parent of the listed individual, if:

(i) there is no surviving spouse or minor child; and

(ii) the parent was claimed as a dependent on the income tax return filed with the Internal Revenue Service by the listed individual in the year preceding the year in which the listed individual died; or

(D) a surviving dependent sibling of the listed individual and is younger than 18 years of age, if:

(i) there is no surviving spouse or minor child; and
 (ii) the sibling was claimed as a dependent on the income tax return filed with the Internal Revenue Service by the listed individual in the year preceding the year in which the listed individual died.

(b) An individual employed by the state or a political or legal subdivision who is subject to certification by the Texas Commission on Fire Protection or whose principal duties are aircraft crash and rescue fire fighting is considered to have died in the course of performing the individual's duty in the individual's position as described by Section 615.003 as a result of exposure to a risk that is inherent in the duty or to which the general public is not customarily exposed if the individual died while actually performing an activity that the individual was certified to perform by the Texas Commission on Fire Protection, without regard to whether the individual was actually performing the activity during the individual's compensable hours at work.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 1107** as follows:

(1) In SECTION 2 of the bill, in proposed Section 615.021(a)(2)(C)(ii), Government Code, strike "individual died; or" and substitute "individual died; ~~or~~" (House Committee Report, page 4, line 12).

(2) In SECTION 2 of the bill, in proposed Section 615.021(a)(2)(D)(ii), Government Code, between "died" and the period (House Committee Report, page 4, line 20) insert the following:

; or

(E) a surviving parent of the listed individual, if there is no surviving spouse, minor child, dependent parent eligible under Subdivision (2)(C), or dependent sibling eligible under Subdivision (2)(D).

(3) In SECTION 2 of the bill, between existing proposed Sections 615.021(a) and (b), Government Code (House Committee Report, page 4, between lines 20 and 21), insert the following:

(b) Payment of assistance may not occur under this subchapter unless an individual is eligible under Subsection (a).

(4) In SECTION 2 of the bill, in existing proposed Section 615.021(b), Government Code, strike "(b)" and substitute "(c)" (House committee report, page 4, line 21).

(5) Insert the following appropriately numbered SECTIONS in the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 615.024, Government Code, is amended to read as follows:

615.024. PAYMENT TO SURVIVING ~~[DEPENDENT]~~ PARENT. The state shall pay an eligible surviving ~~[dependent]~~ parent:

(1) \$50,000, if there is only one eligible surviving ~~[dependent]~~ parent; or

(2) \$25,000 each, if there are two eligible surviving ~~[dependent]~~ parents.

Section ____ Section 615.025(c), Government Code, is amended to read as follows:

(c) A payment under this section is in addition to any payment made under Section 615.024 to a surviving dependent parent.

The amendments were read.

On motion of Senator Duncan, the Senate concurred in the House amendments to **SB 1107** by a viva voce vote.

SENATE RESOLUTION 949

Senator Zaffirini offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 75th Legislature, Regular Session, 1997, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **SB 30** to consider and take action on the following matters:

(1) Senate Rule 12.03(3) is suspended to permit the committee to add "or an ICF-MR facility" to the last sentence of added Section 32.039(u), Human Resources Code, so that the last sentence reads as follows:

This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

Explanation: This change is necessary to provide an exemption from a mandatory punitive provision for ICF-MR facilities similar to the exemption provided for nursing facilities.

(2) Senate Rule 12.03(3) is suspended to permit the committee to add "or an ICF-MR facility" to the last sentence of added Section 32.039(v), Human Resources Code, so that the last sentence reads as follows:

This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

Explanation: This change is necessary to provide an exemption from a mandatory punitive provision for ICF-MR facilities similar to the exemption provided for nursing facilities.

(3) Senate Rule 12.03(3) is suspended to permit the committee to add "or an ICF-MR facility" in amended Section 36.005(a)(1), Human Resources Code, so that Subdivision (1) reads as follows:

(1) shall suspend or revoke:

(A) a provider agreement between the department or agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the department or agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

Explanation: This change is necessary to provide an exemption from a mandatory punitive provision for ICF-MR facilities similar to the exemption provided for nursing facilities.

(4) Senate Rule 12.03(3) is suspended to permit the committee to add "or an ICF-MR facility and who is" in amended Section 36.005(a)(2), Human Resources Code, so that Subdivision (2) reads as follows:

(2) may suspend or revoke:

(A) ~~(1)~~ a provider agreement between the department or agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052 ~~[36.004]~~; or

(B) ~~(2)~~ a permit, license, or certification granted by the department or agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052 ~~[36.004]~~.

Explanation: This change is necessary to conform with the change explained in Item (3) of this resolution.

(5) Senate Rule 12.03(3) is suspended to permit the committee to add "or an ICF-MR facility" to the last sentence of amended Section 36.005(b), Human Resources Code, so that the last sentence reads:

This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

Explanation: This change is necessary to provide an exemption from a mandatory punitive provision for ICF-MR facilities similar to the exemption provided for nursing facilities.

The resolution was read and was adopted by the following vote:
Yeas 31, Nays 0.

SENATE BILL 576 WITH HOUSE AMENDMENTS

Senator Sibley called **SB 576** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 576** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the establishment of the Texas New Horizons Scholarship Trust Fund to exempt worthy high school graduates from tuition and fees at public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 54, Education Code, is amended by adding Section 54.216 to read as follows:

Sec. 54.216. TEXAS NEW HORIZONS SCHOLARSHIPS. (a) The Texas Higher Education Coordinating Board shall issue scholarships, in a number to be determined by the coordinating board after reviewing the total amount of money available to the Texas New Horizons Scholarship Trust Fund, to qualified students. A scholarship may be used by the recipient to attend an eligible public institution of higher education. The purpose of the scholarship is to pay for the recipient's tuition and required fees.

(b) The coordinating board shall adopt rules as necessary for the administration of this section, including rules relating to the establishment of the scholarships, the criteria for awarding a scholarship, the determination of eligibility, and the total scholarship amount that an eligible student may receive.

(c) To be eligible for a scholarship under this section, a person must:

- (1) be a Texas resident, as defined by coordinating board rules;
- (2) be enrolled as an undergraduate student at an eligible institution for at least one-half of a full course load;
- (3) meet minimum academic standards;
- (4) establish financial need;
- (5) satisfy one or more of the eligibility requirements listed in Subsection (d); and
- (6) comply with any other requirements adopted by the coordinating board under this section.

(d) In addition to the requirements of Subsection (c), eligibility for a scholarship shall be based on the following factors:

- (1) the socioeconomic background of the student, including the percentage by which the student's family is above or below any recognized measure of poverty, the student's household income, and the educational level of the student's parents;
- (2) whether the student would be the first generation of the student's family to attend or graduate from an institution of higher education;
- (3) whether the wealth per student of the school district the student attended was below the average wealth per student of school districts as determined in Chapter 41;
- (4) whether the student has demonstrated responsibility in the student's work in school, with the student's family, and within the student's community, including whether the student has been employed while in high school or whether the student has performed substantial child-care duties or has helped to raise children;
- (5) whether the student is a resident of an urban area or a rural area or a resident of a central city or a suburban area in the state;
- (6) the student's performance on standardized tests; and
- (7) the student's performance on standardized tests in comparison with that of other students from similar socioeconomic backgrounds.

(e) A person is not eligible to receive a scholarship under this section if the person:

- (1) has been granted a baccalaureate degree; or
- (2) has received an athletic scholarship.

(f) To be eligible to participate in the scholarship program, an eligible institution must match any state funds with the institution's local funds.

(g) Before the date applications for scholarships are first considered under this section, the coordinating board shall distribute to each eligible institution the eligibility criteria and a description of the weight given to each factor and the role each factor plays in the decision to award scholarships.

(h) The coordinating board shall award the scholarships from the amount available in the Texas New Horizons Scholarship Trust Fund. The trust fund

is established outside the treasury but is held in trust by the comptroller. Money in the trust fund may be spent without appropriation and only to fund the program. Interest and income from the assets of the trust fund shall be credited to and deposited in the trust fund. In each state fiscal year the coordinating board may spend from the trust fund to cover the costs of administering this section an amount not to exceed 2.5 percent of the total amount of money deposited into the trust fund in that fiscal year, excluding matching funds transferred to the trust fund under Subsection (f).

(i) Each eligible institution shall transfer local funds provided by the institution under Subsection (f) to the Texas New Horizons Scholarship Trust Fund. The coordinating board shall use the funds transferred by an institution to provide scholarships to students attending that institution.

(j) The coordinating board may accept gifts and grants from any public or private source for the purposes of this subchapter, and may deposit a gift or grant to the credit of the trust fund.

(k) The legislature may appropriate money to the trust fund.

SECTION 2. Section 74.3012, Property Code, is amended to read as follows:

Sec. 74.3012. DELIVERY OF MONEY TO TEXAS NEW HORIZONS SCHOLARSHIP TRUST [URBAN-SCHOLARSHIP] FUND. (a) The comptroller shall pay any portion of the total amount delivered by local exchange companies under this chapter in excess of \$2 million in any state fiscal year to the Texas New Horizons Scholarship Trust Fund established under Section 54.216, Education Code [Notwithstanding and in addition to any other provision of this chapter or other law, a local exchange company may deliver reported money to a scholarship fund for urban students instead of delivering the money to the state treasurer as prescribed by Section 74.301].

(b) [A local exchange company may deliver the money under this section only to a scholarship fund established by one or more local exchange companies in this state to enable needy students from urban areas to attend college, technical school, or another postsecondary educational institution:

[(c) A local exchange company shall file with the state treasurer a verification of money delivered under this section that complies with Section 74.302.

[(d) A claim for money delivered to a scholarship fund under this section must be filed with the local exchange company that delivered the money. The local exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the scholarship fund is located in accordance with Section 74.506.

[(e) The state treasurer shall prescribe forms and procedures governing this section, including forms and procedures relating to:

- [(1) notice of presumed abandoned property;
- [(2) delivery of reported money to a scholarship fund; and
- [(3) filing of a claim.

[(f)] In this section, "local exchange company" means a telecommunications utility certificated to provide local exchange telephone service within the state and that has 50,000 or more access lines in service in this state and is not a telephone cooperative.

~~[(g) During the 1995-1996 fiscal year, the total amount of money that may be transferred by all local exchange companies under this section may not exceed \$400,000. During each subsequent state fiscal year, the total amount of money that may be transferred by all local exchange companies under this section may not exceed the total amount of money transferred to rural scholarship funds under Section 74.3011 during the previous state fiscal year. The state treasury shall keep a record of the total amount of money transferred annually. If the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the treasury shall notify each local exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.]~~

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1997.

(b) The Texas Higher Education Coordinating Board shall adopt the rules for awarding scholarships under Section 54.216, Education Code, as added by this Act, not later than December 1, 1997.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 1

Amend CSSB 576 as follows:

On page 3, line 16, insert the following after the word "funds" and before the period: "or institutional funds".

Floor Amendment No. 2

Amend CSSB 576 by striking SECTION 2 of the bill.

The amendments were read.

On motion of Senator Sibley, the Senate concurred in the House amendments to **SB 576** by a viva voce vote.

HOUSE BILL 2846 RECOMMITTED

On motion of Senator Madla and by unanimous consent, the Conference Committee Report on **HB 2846** was recommitted to the conference committee.

CONFERENCE COMMITTEE ON HOUSE BILL 2697

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2697** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2697** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Madla, Lucio, Wentworth, and Cain.

(Senator Wentworth in Chair)

SENATE BILL 1395 WITH HOUSE AMENDMENTS

Senator Lindsay again called **SB 1395** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1395** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the preparation of a county budget in certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 111.005, Local Government Code, is amended to read as follows:

Sec. 111.005. INFORMATION FURNISHED BY COUNTY OFFICERS.

(a) In preparing the budget, the county judge may require any county officer to furnish existing information necessary for the judge to properly prepare the budget.

(b) If a county officer fails to provide the information as required by the county judge, the county judge may request the commissioners court to issue an order:

(1) directing the county officer to produce the required information; and

(2) prescribing the form in which the county officer must produce the information.

SECTION 2. Subchapter A, Chapter 111, Local Government Code, is amended by adding Sections 111.0105, 111.0106, and 111.0107 to read as follows:

Sec. 111.0105. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Sec. 111.0106. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor or the county judge in a county that does not have a county

auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Sec. 111.0107. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

SECTION 3. Section 111.041, Local Government Code, is amended to read as follows:

Sec. 111.041. EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER [OF BUDGET SURPLUS]. (a) The commissioners court may spend county funds only in strict compliance with the budget except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk, and the clerk shall attach the copy to the original budget.

(c) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure. [On proper application, the commissioners court may transfer an existing budget surplus during the fiscal year to a budget of a similar kind and fund. However, the transfer may not increase the total of the budget.]

SECTION 4. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.0415 to read as follows:

Sec. 111.0415. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

SECTION 5. Section 111.042, Local Government Code, is amended to read as follows:

Sec. 111.042. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS [ANTICIPATION WARRANTS]. If a county bond issue is submitted at an election or other authorized obligations [if anticipation warrants] are to be issued against future revenues and a tax is to be levied for those obligations [warrants], the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations [warrants], the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

SECTION 6. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.0431 to read as follows:

Sec. 111.0431. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

SECTION 7. Section 111.070, Local Government Code, is amended to read as follows:

Sec. 111.070. EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER [OF BUDGET SURPLUS]. (a) The commissioners court may spend county funds only in strict compliance with the budget, except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk and the clerk shall attach the copy to the original budget.

(c) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure. [On proper application, the commissioners court may transfer an existing budget surplus during the fiscal year to a budget of a similar kind and fund. However, the transfer may not increase the total of the budget.]

SECTION 8. Subchapter C, Chapter 111, Local Government Code, is amended by adding Sections 111.0705, 111.0706, 111.0707, 111.0708, and 111.0709 to read as follows:

Sec. 111.0705. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Sec. 111.0706. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Sec. 111.0707. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor shall certify to

the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

Sec. 111.0708. PLEDGING REVENUE AS SECURITY FOR BONDS AND OTHER OBLIGATIONS. In preparing a county budget, a county may secure county bonds or other obligations by pledging for the term of the bonds or other obligations:

(1) any security authorized by law; or

(2) any revenue or receipts obtained by the county from the levy of a state tax if the state is required to pay the county the proceeds or receipts from the tax.

Sec. 111.0709. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 1395** by adding a new SECTION to the bill (on page 6, between lines 22 and 23, house committee report version), to be numbered appropriately, to read as follows and by renumbering subsequent sections of the bill appropriately:

SECTION ____ Subchapter D, Chapter 111, Local Government Code, is amended by adding Section 111.094 to read as follows:

Sec. 111.094. ITEMIZED BUDGET. Notwithstanding any other law, the commissioners court in preparing the county budget shall determine the amount of county funds to be spent for each item listed in the county budget.

Amendment No. 2

CSSB 1395 is amended by adding a new Section 9 as follows and renumbering all following Sections appropriately.

SECTION 9. Subsection (c), Section 113.901, Local Government Code, is amended to read as follows:

(c) The commissioners court ~~[county judge]~~ of a county that has the office of county auditor may, by a written order, waive the requirement of the county judge's approval of requisitions. The order must be recorded in the minutes of the commissioners court. If the approval of the county judge is waived, all claims must be approved by the commissioners court in open court.

The amendments were again read.

Senator Lindsay again moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

(President in Chair)

Senator Harris offered a substitute motion to postpone further consideration of **SB 1395** with House amendments to a time certain of 12:00 noon Monday, June 2, 1997.

The substitute motion was lost by the following vote: Yeas 10, Nays 14.

Yeas: Barrientos, Brown, Harris, Luna, Nelson, Shapiro, Sibley, Truan, West, Zaffirini.

Nays: Cain, Duncan, Ellis, Galloway, Haywood, Lindsay, Madla, Moncrief, Nixon, Ogden, Patterson, Ratliff, Shapleigh, Wentworth.

Absent: Armbrister, Bivins, Carona, Fraser, Gallegos, Lucio, Whitmire.

Question recurring on the motion to not concur in House amendments to **SB 1395**, the motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 1395** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lindsay, Chair; Lucio, Luna, Shapleigh, and Moncrief.

SENATE BILL 1539 WITH HOUSE AMENDMENTS

Senator West called **SB 1539** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1539** as follows:

(1) In SECTION 7 of the bill, in amend Section 42.041(b), Human Resources Code, strike Subdivision (7) (committee printing, page 7, lines 22-25), and insert the following:

(7) an educational facility accredited by the Texas [Central] Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above, after-school programs operated directly by an accredited educational facility, or an after-school program operated by another entity under contract with the educational facility if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the after-school program operated under the contract;

Floor Amendment No. 2

Amend SB 1539, in SECTION 7 of the bill, in amended Section 42.072, Human Resources Code (committee printing, page 32, after line 25), by inserting the following:

(e) A person may continue to operate a facility or family home during an appeal of a license or registration denial or revocation unless the denial or revocation is based on a violation that poses a risk to the health or safety of children. The department by rule shall establish the violations that pose a risk to the health or safety of children. The department shall notify a facility or family home of a violation by the facility or home that poses a risk to the health or safety of children requiring that the facility or home cease operating. A person who has been notified by the department that the facility or home may not operate under this subsection is entitled to seek injunctive relief from a district court to permit operation during the appeal. The court may grant injunctive relief permitting the facility or home to operate if the court finds that the operation does not pose a risk to the health or safety of children.

Amendment No. 1 on Third Reading

Amend SB 1539 on third reading by striking the text of second reading amendment No. 2.

Amendment No. 2 on Third Reading

Amend SB 1539 on third reading, in SECTION 7 of the bill, in amended Section 42.072, Human Resources Code (committee printing, page 32, after line 25), by inserting the following:

(e) A person may continue to operate a facility or family home during an appeal of a license or registration denial or revocation unless the revocation or denial is based on a violation which poses a risk to the health or safety of children. The department shall by rule establish the violations which pose a risk to the health or safety of children. The department shall notify the facility or family home of the violation which poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the department that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located, to allow operation during the pendency of an appeal. The court may grant injunctive relief against the agency's action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final agency action unless conferred by Government Code Chapter 2001.

Floor Amendment No. 3 on Third Reading

Amend SB 1539 on third reading as follows:

(1) In SECTION 7 of the bill (House committee report, page 12, line 19), strike "(1) family homes;" and substitute the following:

(1) registered family homes;

(2) In SECTION 7 of the bill (House committee report, page 22, lines 16-18), strike the words "The operator of a registered home must display the registration in a prominent place at the home." and insert the following: "The operator of a registered home is not required to display the registration in a prominent place but shall make the listing available for examination."

Floor Amendment No. 4 on Third Reading

Amend SB 1539, on third reading, in SECTION 7 of the bill, by striking amended Subsection (d), Section 42.073, Human Resources Code (House committee report, page 33, lines 19-22), and substituting the following:

~~[(d) The suspension of a license and the closure of the facility and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.]~~

Floor Amendment No. 5 on Third Reading

Amend SB 1539, on third reading, as follows:

(1) In SECTION 7 of the bill, in amended Subsection (b)(10), Section 42.041, Human Resources Code (House committee report, page 8, line 15), between "registered" and "as", insert "or listed".

(2) In SECTION 7 of the bill, in amended Subsection (b), Section 42.044, Human Resources Code (House committee report, page 16, line 8), immediately following the first sentence, insert "The department shall investigate a listed family home when the department receives a complaint of abuse or neglect of a child, as defined by Section 261.001, Family Code.".

(3) In SECTION 7 of the bill, in the amended heading of Section 42.046, Human Resources Code (House committee report, page 17, line 16), between "LICENSE" and "OR", insert ", LISTING,".

(4) In SECTION 7 of the bill, in amended Subsection (a), Section 42.046, Human Resources Code (House committee report, page 17, line 18), between "for a" and "registration", insert "listing or".

(5) In SECTION 7 of the bill, in amended Subsection (b), Section 42.046, Human Resources Code (House committee report, page 17, line 24), between "standards" and the period, insert ", if applicable".

(6) In SECTION 7 of the bill, in amended Subsection (c), Section 42.046, Human Resources Code (House committee report, page 18, line 2), between "children" and the period, insert ", if applicable".

(7) In SECTION 7 of the bill, in amended Subsection (a), Section 42.047, Human Resources Code (House committee report, page 18, line 9), immediately before "registration", insert "listing".

(8) In SECTION 7 of the bill, in amended Subsection (a), Section 42.047, Human Resources Code (House committee report, page 18, line 10), between "licensing," and "registration", insert "listing".

(9) In SECTION 7 of the bill, in amended Subsection (e), Section 42.049, Human Resources Code (House committee report, page 20, line 25), strike "or registered family home" and substitute "or a listed or registered family home".

(10) In SECTION 7 of the bill, strike amended Section 42.052, Human Resources Code (House committee report, page 21, line 25, through page 23, line 12), and substitute the following:

Sec. 42.052. CERTIFICATION, LISTING, AND REGISTRATION.

(a) A state-operated child-care facility or child-placing agency must receive certification of approval from the department ~~[division]~~. The certification of approval remains valid until revoked or surrendered.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A family home that provides care for compensation for three or fewer children, excluding ~~[the caretaker's own]~~ children who are related to the caretaker, shall list with the department if the home provides regular care in the caretaker's own residence. The home may register with the ~~department~~ ~~[division]~~.

(d) A family home that provides care for four or more children, excluding ~~[the caretaker's own]~~ children who are related to the caretaker, shall ~~[must]~~ register with the department ~~[division]~~. A family home that provides care exclusively for any number of children who are related to the caretaker is not required to be listed or registered with the department.

(e) A registration or listing remains valid until revoked or surrendered. The operator of a registered home must display the registration in a prominent place at the home.

(f) ~~[(d)]~~ To remain listed or registered with the department ~~[division]~~, a family home must comply with the department's rules and standards, if applicable, and any provision of this chapter that applies to a listed or registered family home.

(g) ~~[(e)]~~ The certification requirements of this section do not apply to a Texas Youth Commission ~~[Council]~~ facility, a Texas Juvenile Probation Commission facility, or a facility providing services solely for the Texas Youth Commission ~~[Council]~~.

~~[(f)] A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered with the division under this chapter. Any public advertisement for a registered family home which uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR INSPECTED."~~

(h) ~~[(g)]~~ The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or Section 141.042(d).

(i) The department shall provide to a listed family home a copy of the listing. A listing must contain a provision that states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED." The operator of a listed home is not required to display the

listing in a prominent place at the home but shall make the listing available for examination. The department by rule shall provide for a sufficient period to allow operators of family homes to comply with the listing requirement of this section.

(j) The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under Section 42.056.

(k) The department shall issue a listing or registration to a family home, as appropriate, in both English and Spanish when the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which the family home is located is of Hispanic origin or Spanish-speaking.

(11) In SECTION 7 of the bill, in amended Section 42.054, Human Resources Code (House committee report, page 26, lines 8-16), strike Subsections (e) and (f) and substitute the following:

(e) The department ~~[division]~~ shall charge each family home that is listed or registered with the department ~~[division]~~ an annual ~~[registration]~~ fee ~~[of \$35]~~ to cover a part of the department's cost in regulating family homes. The amount of the fee is \$20 for a listed home or \$35 for a registered home. The fee is due on the date on which the department initially lists or ~~[division]~~ registers the home and on the anniversary of that date.

(f) If a facility, agency, or home fails to pay the annual ~~[license or registration]~~ fee when due, the license, listing, or registration, as appropriate, is suspended until the fee is paid.

(12) In SECTION 7 of the bill, in proposed Subsection (a), Section 42.056, Human Resources Code (House committee report, page 28, line 10), immediately before "registering", insert "listing or".

(13) In SECTION 7 of the bill, in proposed Subsection (a), Section 42.056, Human Resources Code (House committee report, page 28, line 11), between "license," and "registration,", insert "listing,".

(14) In SECTION 7 of the bill, in proposed Subsection (c), Section 42.056, Human Resources Code (House committee report, page 29, line 5), between "or" and "family", insert "registered".

(15) In SECTION 7 of the bill, in the heading of amended Section 42.072, Human Resources Code (House committee report, page 30, line 22), between "LICENSE" and "OR", insert ", LISTING,".

(16) In SECTION 7 of the bill, strike amended Subsection (a), Section 42.072, Human Resources Code (House committee report, page 30, lines 23-25 through page 31, lines 1-5), and substitute the following:

(a) The department ~~[division]~~ may suspend, deny, [or] revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license, listing, registration, or certification. The department may revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(17) In SECTION 7 of the bill, in amended Subsection (c), Section 42.072, Human Resources Code (House committee report, page 32,

lines 16 and 17), immediately before "registration" each time the term appears in the subsection, insert "listing".

(18) In SECTION 7 of the bill, in proposed Subsection (d), Section 42.072, Human Resources Code (House committee report, page 32, line 22), between "or for" and "registering", insert "listing or".

(19) In SECTION 7 of the bill, in proposed Subsection (d), Section 42.072, Human Resources Code (House committee report, page 32, line 24), immediately before "registration", insert "listing or".

(20) In SECTION 7 of the bill, in proposed Subsection (e), Section 42.072, Human Resources Code, as added by Floor Amendment No. 2 (Swinford), in the first sentence, between "license" and "or registration", insert "listing".

(21) In SECTION 7 of the bill, in amended Section 42.072, Human Resources Code (House committee report, page 32, after line 25), insert the following:

(f) The department shall deny an application or renewal for listing or registering a family home or shall revoke a family home's listing or registration if the results of a background or criminal history check conducted by the department under Section 42.056 show that a person has been convicted of an offense under Title 5 or 6, Penal Code, or Chapter 43, Penal Code.

(22) In SECTION 7 of the bill, in amended Subsection (a), Section 42.073, Human Resources Code (House committee report, page 33, line 3), between "home's" and "registration", insert "listing or".

(23) In SECTION 7 of the bill, in amended Subsection (b), Section 42.073, Human Resources Code (House committee report, page 33, line 12), between "license" and "or", insert "listing".

(24) In SECTION 7 of the bill, in amended Subsection (b), Section 42.073, Human Resources Code (House committee report, page 33, line 15), between "license" and "or", insert "listing".

(25) In SECTION 7 of the bill, in amended Subsection (d), Section 42.073, Human Resources Code (House committee report, page 33, line 19), between "license" and "or", insert "listing".

(26) In SECTION 7 of the bill, in amended Subsection (a), Section 42.074, Human Resources Code (House committee report, page 33, line 25, and page 34, line 1), immediately following "certification," each time the term appears in the subsection, insert "listing".

(27) In SECTION 7 of the bill, in amended Subsection (a)(3), Section 42.075, Human Resources Code (House committee report, page 35, line 9), between "or" and "unregistered", insert "an unlisted or".

(28) In SECTION 7 of the bill, in amended Subsection (b), Section 42.076, Human Resources Code (House committee report, page 35, line 17), immediately before "registration", insert "required listing or".

(29) In SECTION 7 of the bill, in amended Subsection (c), Section 42.076, Human Resources Code (House committee report, page 35, line 19), between "an" and "unregistered", insert "unlisted or".

(30) In SECTION 7 of the bill, in amended Subsection (a), Section 42.077, Human Resources Code (House committee report, page 36, line 9), between "home's" and "registration", insert "listing or".

(31) In SECTION 7 of the bill, in amended Subsection (b), Section 42.077, Human Resources Code (House committee report, page 36, lines 15 and 16), immediately following "license" each time the term appears in the subsection, insert "listing".

(32) In SECTION 7 of the bill, in amended Subsection (c), Section 42.077, Human Resources Code (House committee report, page 36, line 23), strike "registering" and substitute "listing, registering".

(33) In SECTION 7 of the bill, in amended Subsection (d), Section 42.077, Human Resources Code (House committee report, page 37, line 2), between "license" and "or", insert "listing".

(34) In SECTION 7 of the bill, in amended Subsection (d), Section 42.077, Human Resources Code (House committee report, page 37, line 7), between "license" and "or", insert "listing".

(35) In SECTION 7 of the bill, in amended Section 42.077, Human Resources Code (House committee report, page 37, between lines 8 and 9), insert the following:

(e) When the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which a family home whose listing or registration has been revoked or suspended is located is of Hispanic origin or Spanish-speaking, the department shall publish the notice under Subsection (a) in both English and Spanish.

(36) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0522 to read as follows:

Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. (a) A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered under this chapter. Any public advertisement for a registered family home that uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(b) A family home may not place a public advertisement that uses the title "listed family home" or any variation of the phrase unless the home is listed as provided by this chapter. Any public advertisement for a listed family home that uses the title "listed family home" must contain a provision in bold type stating: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

Floor Amendment No. 6 on Third Reading

Amend **SB 1539** on third reading by adding appropriately numbered SECTIONS to the bill, to read as follows, and renumbering the existing SECTIONS of the bill accordingly:

SECTION _____. Section 481.134(a)(5), Health and Safety Code, is amended to read as follows:

(5) "School" means a private or public elementary or secondary school or a day-care center, as defined by Section 42.002, Human Resources Code.

SECTION ____ . Section 46.11(c), Penal Code, is amended to read as follows:

(c) In this section:

(1) "Institution[;—"institution] of higher education[;]" and "premises[;]" [and "school"] have the meanings assigned by Section 481.134, Health and Safety Code.

(2) "School" means a private or public elementary or secondary school.

The amendments were read.

On motion of Senator West, the Senate concurred in the House amendments to **SB 1539** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 149

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 149** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BIVINS

CUELLAR

SIBLEY

DUNNAM

RATLIFF

RANGEL

BARRIENTOS

RABUCK

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to performance evaluation of tenured faculty at certain institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.942 to read as follows:

Sec. 51.942. PERFORMANCE EVALUATION OF TENURED FACULTY. (a) In this section:

(1) "Governing board" has the meaning assigned by Section 61.003.

(2) "Institution of higher education" means a general academic teaching institution, medical and dental unit, or other agency of higher education, as those terms are defined by Section 61.003.

(3) "Neglect of duty" means continuing or repeated substantial neglect of professional responsibilities.

(b) Each governing board of an institution of higher education shall adopt rules and procedures providing for a periodic performance evaluation process for all faculty tenured at the institution. The governing board may design its rules and procedures to fit the institution's particular educational mission, traditions, resources, and circumstances relevant to its character, role and scope, in addition to other relevant factors determined by the governing board in the rules adopted pursuant to this section. The governing board shall seek advice and comment from the faculty of the institution before adopting any rules pursuant to this section. The advice and comment from the faculty on the performance evaluation of tenured faculty shall be given the utmost consideration by the governing board.

(c) In addition to any other provisions adopted by the governing board, the rules shall include provisions providing that:

(1) each faculty member tenured at the institution be subject to a comprehensive performance evaluation process conducted no more often than once every year, but no less often than once every six years, after the date the faculty member was granted tenure or received an academic promotion at the institution;

(2) the evaluation be based on the professional responsibilities of the faculty member, in teaching, research, service, patient care, and administration, and include peer review of the faculty member;

(3) the process be directed toward the professional development of the faculty member;

(4) the process incorporate commonly recognized academic due process rights, including notice of the manner and scope of the evaluation, the opportunity to provide documentation during the evaluation process and, before a faculty member may be subject to disciplinary action on the basis of an evaluation conducted pursuant to this section, notice of specific charges and an opportunity for hearing on those charges; and

(5) a faculty member be subject to revocation of tenure or other appropriate disciplinary action if incompetency, neglect of duty or other good cause is determined to be present.

(d) A faculty member subject to termination on basis of an evaluation conducted pursuant to this section must be given the opportunity for referral of the matter to a nonbinding alternative dispute resolution process as stated in Section 154.001, Civil Practice and Remedies Code. If both parties agree, another type of alternative dispute resolution method may be elected. The governing board must give specific reasons in writing for any decision to terminate a faculty member on the basis of an evaluation conducted pursuant to this section.

(e) A governing board may not waive the evaluation process for any faculty member granted tenure at an institution.

(f) A governing board may not award tenure to an administrator in any way that varies from the institution's general policy on the award of tenure.

(g) Each governing board shall file a copy of the rules adopted pursuant to this section, and any amendments to such rules, with the Texas Higher Education Coordinating Board on or before September 1 of each year.

SECTION 2. The rules adopted by a governing board of an institution of higher education pursuant to the provisions of this Act shall provide for the performance evaluation of tenured faculty not later than January 1, 2004, of each faculty member tenured at the institution as of the effective date of this Act.

SECTION 3. This Act takes effect January 1, 1998.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1098

Senator Luna submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1098** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LUNA	GIDDINGS
CAIN	SMITH
ELLIS	GUTIERREZ
DUNCAN	EHRHARDT
WENTWORTH	GOODMAN
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to exempting certain support payments from seizure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 42.001, Property Code, is amended to read as follows:

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor; and

(3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor.

SECTION 2. (a) This Act takes effect September 1, 1997.

(b) The change in law made by this Act applies only to alimony, support, or separate maintenance for support of the debtor or a dependent of the debtor received or to be received on or after September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 30

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 30, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 30** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI
BIVINS
MONCRIEF
NELSON
OGDEN

MAXEY
COLEMAN
CUELLAR

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to fraud and improper payments under the state Medicaid program and other welfare programs and to the creation of a criminal offense; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

RELATING TO WELFARE AGENCIES

SECTION 1.01. COLLECTION OF FOOD STAMP AND FINANCIAL ASSISTANCE PAYMENTS MADE IN ERROR. (a) Chapter 22, Human Resources Code, is amended by adding Sections 22.0251-22.0254 to read as follows:

Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS.

(a) Subject to the approval of the commissioner of health and human services, the department shall:

(1) determine and record the time taken by the department to establish an overpayment claim in the food stamp program or the program of financial assistance under Chapter 31;

(2) set progressive goals for reducing the time described by Subdivision (1); and

(3) adopt a schedule to meet the goals set under Subdivision (2).

(b) The department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a semiannual report detailing the department's progress in reaching its goals under Subsection (a)(2). The report may be consolidated with any other report relating to the same subject that the department is required to submit under other law.

Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The department shall use the telephone to attempt to collect reimbursement from a person who receives a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31.

(b) The department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a semiannual report on the operation and success of the telephone collection program. The report may be consolidated with any other report relating to the same subject that the department is required to submit under other law.

Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET PROGRAM. The department shall participate in the Federal Tax Refund Offset Program (FTROP) to attempt to recover benefits granted by the department in error under the food stamp program. The department shall submit as many claims that meet program criteria as possible for offset against income tax returns.

Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The department shall keep a record of the dispositions of referrals made by the department to a district attorney concerning fraudulent claims for benefits under the food stamp program or the program of financial assistance under Chapter 31.

(b) The department may:

(1) request status information biweekly from the appropriate district attorney on each major fraudulent claim referred by the department;

(2) request a written explanation from the appropriate district attorney for each case referred in which the district attorney declines to prosecute; and

(3) encourage the creation of a special welfare fraud unit in each district attorney's office that serves a municipality with a population of more than 250,000, to be financed by amounts provided by the department.

(c) The department by rule may define what constitutes a major fraudulent claim under Subsection (b)(1).

(b) Chapter 22, Human Resources Code, is amended by adding Section 22.0291 to read as follows:

Sec. 22.0291. INFORMATION MATCHING SYSTEM RELATING TO IMMIGRANTS AND FOREIGN VISITORS. (a) The department shall, through the use of a computerized matching system, compare department information relating to applicants for and recipients of food stamps and financial assistance under Chapter 31 with information obtained from the Department of State of the United States and the United States Department of Justice relating to immigrants and visitors to the United States for the purpose of preventing individuals from unlawfully receiving public assistance benefits administered by the department.

(b) The department may enter into an agreement with the Department of State of the United States and the United States Department of Justice as necessary to implement this section.

(c) The department and federal agencies sharing information under this section shall protect the confidentiality of the shared information in compliance with all existing state and federal privacy guidelines.

(d) The department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a semiannual report on the operation and success of the information matching system required by this section. The report may be consolidated with any other report relating to the same subject matter the department is required to submit under other law.

(c) Not later than January 1, 1998, the Texas Department of Human Services shall begin operation of the telephone collection program required by Section 22.0252, Human Resources Code, as added by this section.

(d) Not later than January 1, 1998, the Texas Department of Human Services shall submit the initial reports required by Sections 22.0251(b) and 22.0291(d), Human Resources Code, as added by this section.

(e) Not later than September 1, 1998, the Texas Department of Human Services shall submit the initial report required by Section 22.0252(b), Human Resources Code, as added by this section.

SECTION 1.02. USE OF EARNED FEDERAL FUNDS. Chapter 22, Human Resources Code, is amended by adding Section 22.032 to read as follows:

Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the General Appropriations Act, the department may use earned federal funds derived from recovery of amounts paid or benefits granted by the department as a result of fraud to pay the costs of the department's activities relating to preventing fraud.

SECTION 1.03. PAYMENT OF MEDICAID CLAIMS. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Sections 32.043 and 32.044 to read as follows:

Sec. 32.043. DUAL MEDICAID AND MEDICARE COVERAGE.

(a) At least annually the department shall identify each individual receiving medical assistance under the medical assistance program who is eligible to receive similar assistance under the Medicare program.

(b) The department shall analyze claims submitted for payment for a service provided under the medical assistance program to an individual identified under Subsection (a) to ensure that payment is sought first under the Medicare program to the extent allowed by law.

Sec. 32.044. MISDIRECTED BILLING. To the extent authorized by federal law, the department shall develop a procedure for the state to:

(1) match claims for payment for medical assistance provided under the medical assistance program against data available from other entities, including the Veterans Administration and nursing facilities, to determine alternative responsibility for payment of the claims; and

(2) ensure that the appropriate entity bears the cost of a claim.

(b) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.04. ENHANCED MEDICAID REIMBURSEMENT. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.045 to read as follows:

Sec. 32.045. ENHANCED REIMBURSEMENT. The department shall develop a procedure for:

(1) identifying each service provided under the medical assistance program for which the state is eligible to receive enhanced reimbursement of costs from the federal government; and

(2) ensuring that the state seeks the highest level of federal reimbursement available for each service provided.

(b) The Texas Department of Health shall identify services provided under the state Medicaid program for the period beginning December 31, 1989, and ending immediately before the effective date of this section for which the state was eligible but did not receive enhanced reimbursement of costs at a 90 percent rate from the federal government. For that period, the department shall seek from the federal government all reimbursements to which the state is entitled.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.05. MINIMUM COLLECTION GOAL. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.047 to read as follows:

Sec. 531.047. MINIMUM COLLECTION GOAL. (a) Before August 31 of each year, the commission, after consulting with the Texas Department of Human Services, by rule shall set a minimum goal for the Texas Department of Human Services that specifies the percentage of the amount of benefits granted by the department in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, that the department should recover. The commission shall set the percentage based on comparable recovery rates reported by other states or other appropriate factors identified by the commission and the department.

(b) If the department fails to meet the goal set under Subsection (a) for the fiscal year, the commissioner shall notify the comptroller, and the comptroller shall reduce the department's general revenue appropriation by an amount equal to the difference between the amount of state funds the department would have collected had the department met the goal and the amount of state funds the department actually collected.

(c) The commission, the governor, and the Legislative Budget Board shall monitor the department's performance in meeting the goal set under this section. The department shall cooperate by providing to the commission, the governor, and the Legislative Budget Board, on request, information concerning the department's collection efforts.

(b) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.06. COMMISSION POWERS AND DUTIES RELATING TO WELFARE FRAUD. (a) Chapter 531, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. MEDICAID AND
OTHER WELFARE FRAUD, ABUSE, OR OVERCHARGES

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR OVERCHARGES. (a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if the commission determines that the disclosure results in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.

(b) The commission shall determine the amount of an award. The award must be equal to not less than 10 percent of the savings to this state that result from the individual's disclosure. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of the program.

(c) An award under this section is subject to appropriation. The award must be paid from money appropriated to or otherwise available to the commission, and additional money may not be appropriated to the commission for the purpose of paying the award.

(d) Payment of an award under this section from federal funds is subject to the permissible use under federal law of funds for this purpose.

(e) A person who brings an action under Subchapter C, Chapter 36, Human Resources Code, is not eligible for an award under this section.

Sec. 531.102. INVESTIGATIONS AND ENFORCEMENT OFFICE. (a) The commission, through the commission's office of investigations and enforcement, is responsible for the investigation of fraud in the provision of health and human services and the enforcement of state law relating to the provision of those services.

(b) The commission shall set clear objectives, priorities, and performance standards for the office that emphasize:

(1) coordinating investigative efforts to aggressively recover money;

(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and

(3) maximizing opportunities for referral of cases to the office of the attorney general.

(c) The commission shall train office staff to enable the staff to pursue priority Medicaid and welfare fraud and abuse cases as necessary.

(d) The commission may require employees of health and human services agencies to provide assistance to the commission in connection with the commission's duties relating to the investigation of fraud in the provision of health and human services.

Sec. 531.103. INTERAGENCY COORDINATION. (a) The commission and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse under the state Medicaid program. The memorandum of understanding shall require:

(1) the commission and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation to enhance deterrence of fraud, waste, or abuse in the program and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(2) the commission to keep detailed records for cases processed by the commission or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the commission to notify each appropriate division of the office of the attorney general of each case referred by the commission;

(4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the commission of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the commission and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the commission and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(b) An exchange of information under this section between the office of the attorney general and the commission or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(c) The commission and the office of the attorney general shall jointly prepare and submit a semiannual report to the governor, lieutenant governor, and speaker of the house of representatives concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state

Medicaid program. The report may be consolidated with any other report relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

(d) The commission and the office of the attorney general may not assess or collect investigation and attorney's fees on behalf of any state agency unless the office of the attorney general or other state agency collects a penalty, restitution, or other reimbursement payment to the state.

(e) The commission shall refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. A failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.

(f) The district attorney, county attorney, city attorney, or private collection agency may collect and retain costs associated with the case and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected.

Sec. 531.104. ASSISTING INVESTIGATIONS BY ATTORNEY GENERAL. (a) The commission and the attorney general shall execute a memorandum of understanding under which the commission shall provide investigative support as required to the attorney general in connection with cases under Subchapter B, Chapter 36, Human Resources Code. Under the memorandum of understanding, the commission shall assist in performing preliminary investigations and ongoing investigations for actions prosecuted by the attorney general under Subchapter C, Chapter 36, Human Resources Code.

(b) The memorandum of understanding must provide that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year.

Sec. 531.105. FRAUD DETECTION TRAINING. (a) The commission shall develop and implement a program to provide annual training to contractors who process Medicaid claims and appropriate staff of the Texas Department of Health and the Texas Department of Human Services in identifying potential cases of fraud, waste, or abuse under the state Medicaid program. The training provided to the contractors and staff must include clear criteria that specify:

(1) the circumstances under which a person should refer a potential case to the commission; and

(2) the time by which a referral should be made.

(b) The Texas Department of Health and the Texas Department of Human Services, in cooperation with the commission, shall periodically set a goal of the number of potential cases of fraud, waste, or abuse under the state Medicaid program that each agency will attempt to identify and refer to the commission. The commission shall include information on the agencies' goals and the success of each agency in meeting the agency's goal in the report required by Section 531.103(c).

Sec. 531.106. LEARNING OR NEURAL NETWORK TECHNOLOGY. (a) The commission shall use learning or neural network technology to identify and deter fraud in the Medicaid program throughout this state.

(b) The commission shall contract with a private or public entity to develop and implement the technology. The commission may require the entity it contracts with to install and operate the technology at locations specified by the commission, including commission offices.

(c) The data used for neural network processing shall be maintained as an independent subset for security purposes.

(d) The commission shall require each health and human services agency that performs any aspect of the state Medicaid program to participate in the implementation and use of the technology.

(e) The commission shall maintain all information necessary to apply the technology to claims data covering a period of at least two years.

(f) The commission shall refer cases identified by the technology to the commission's office of investigations and enforcement or the office of the attorney general, as appropriate.

Sec. 531.107. MEDICAID AND PUBLIC ASSISTANCE FRAUD OVERSIGHT TASK FORCE. (a) The Medicaid and Public Assistance Fraud Oversight Task Force advises and assists the commission and the commission's office of investigations and enforcement in improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

(1) attorney general's office, appointed by the attorney general;

(2) comptroller's office, appointed by the comptroller;

(3) Department of Public Safety, appointed by the public safety director;

(4) state auditor's office, appointed by the state auditor;

(5) commission, appointed by the commissioner of health and human services;

(6) Texas Department of Human Services, appointed by the commissioner of human services; and

(7) Texas Department of Insurance, appointed by the commissioner of insurance.

(c) The comptroller or the comptroller's designee serves as the presiding officer of the task force. The task force may elect any other necessary officers.

(d) The task force shall meet at least once each fiscal quarter at the call of the presiding officer.

(e) The appointing agency is responsible for the expenses of a member's service on the task force. Members of the task force receive no additional compensation for serving on the task force.

(f) At least once each fiscal quarter, the commission's office of investigations and enforcement shall provide to the task force:

(1) information detailing:

(A) the number of fraud referrals made to the office and the origin of each referral;

(B) the time spent investigating each case;

(C) the number of cases investigated each month, by program and region;

(D) the dollar value of each fraud case that results in a criminal conviction; and

(E) the number of cases the office rejects and the reason for rejection, by region; and

(2) any additional information the task force requires.

Sec. 531.108. FRAUD PREVENTION. (a) The commission's office of investigations and enforcement shall compile and disseminate accurate information and statistics relating to:

(1) fraud prevention; and

(2) post-fraud referrals received and accepted or rejected from the commission's case management system or the case management system of a health and human services agency.

(b) The commission shall:

(1) aggressively publicize successful fraud prosecutions and fraud-prevention programs through all available means, including the use of statewide press releases issued in coordination with the Texas Department of Human Services; and

(2) ensure that a toll-free hotline for reporting suspected fraud in programs administered by the commission or a health and human services agency is maintained and promoted, either by the commission or by a health and human services agency.

(c) The commission shall develop a cost-effective method of identifying applicants for public assistance in counties bordering other states and in metropolitan areas selected by the commission who are already receiving benefits in other states. If economically feasible, the commission may develop a computerized matching system.

(d) The commission shall:

(1) verify automobile information that is used as criteria for eligibility; and

(2) establish a computerized matching system with the Texas Department of Criminal Justice to prevent an incarcerated individual from illegally receiving public assistance benefits administered by the commission.

(e) The commission shall submit to the governor and Legislative Budget Board a semiannual report on the results of computerized matching of commission information with information from neighboring states, if any, and information from the Texas Department of Criminal Justice. The report may be consolidated with any other report relating to the same subject matter the commission is required to submit under other law.

(b) Section 22.028(c), Human Resources Code, is amended to read as follows:

(c) No later than the first day of each month, the department shall send the comptroller a report listing the accounts on which enforcement actions or other steps were taken by the department in response to the records received from the EBT operator under this section, and the action taken by the department. The comptroller shall promptly review the report and, as appropriate, may solicit the advice of the Medicaid and Public Assistance Fraud Oversight Task Force regarding the results of the department's enforcement actions.

(c) Section 531.104, Government Code, as added by this section, takes effect only if the transfer of employees of the Texas Department of Human Services and the Texas Department of Health to the Health and Human Services Commission, as proposed by Section 1.07 of this article, or similar legislation, is enacted by the 75th Legislature in regular session and becomes law.

(d) Not later than January 1, 1998, the Health and Human Services Commission shall award the contract for the learning or neural network technology required by Section 531.106, Government Code, as added by this section, and the contractor shall begin operations not later than that date. If the commission fails to award the contract or the contractor cannot begin operations on or before January 1, 1998, the commissioner of health and human services shall enter into an interagency agreement with the comptroller to enable the comptroller to perform the duties prescribed by Section 531.106. In addition to the interagency agreement, the commissioner of health and human services and the comptroller shall execute a memorandum of understanding to ensure that the comptroller receives all data and resources necessary to operate the learning or neural network technology system.

(e) Not later than April 1, 1998, the Health and Human Services Commission shall submit the initial report required by Section 531.108(e), Government Code, as added by this section.

(f) In addition to the substantive changes in law made by this section, this section, in adding Section 531.101, Government Code, conforms to a change in the law made by Section 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1995.

(g) Section 16G, Article 4413(502), Revised Statutes, as added by Section 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1995, is repealed.

(h) To the extent of any conflict, this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes.

(i) Sections 21.0145 and 22.027, Human Resources Code, are repealed.

(j) Sections 531.102 and 531.106, Government Code, as added by this section, take effect on the first date that those sections may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.07. CONSOLIDATION OF STAFF. (a) On September 1, 1997, or an earlier date provided by an interagency agreement with the affected agencies:

(1) all powers, duties, functions, programs, and activities performed by or assigned to the Texas Department of Human Services' utilization and assessment review function immediately before September 1, 1997, are transferred to the Health and Human Services Commission;

(2) all funds, obligations, contracts, property, and records of the Texas Department of Human Services' utilization and assessment review function are transferred to the Health and Human Services Commission; and

(3) all employees of the Texas Department of Human Services responsible for the department's utilization and assessment review function

become employees of the Health and Human Services Commission, to be assigned duties by the commissioner of health and human services.

(b) On September 1, 1997, or an earlier date provided by an interagency agreement with the affected agencies:

(1) all powers, duties, functions, programs, and activities performed by or assigned to the Texas Department of Health's claims review and analysis group and policy and data analysis group immediately before September 1, 1997, are transferred to the Health and Human Services Commission;

(2) all funds, obligations, contracts, property, and records of the Texas Department of Health's claims review and analysis group and policy and data analysis group are transferred to the Health and Human Services Commission; and

(3) all employees of the Texas Department of Health's claims review and analysis group and policy and data analysis group become employees of the Health and Human Services Commission, to be assigned duties by the commissioner of health and human services.

(c) A rule or form adopted by the Texas Department of Human Services that relates to the utilization and assessment review function or by the Texas Department of Health that relates to the claims review and analysis group or the policy and data analysis group is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission. The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this subsection.

(d) The commissioner of health and human services shall oversee and assist in the transfer of powers, duties, functions, programs, and activities prescribed by Subsections (a) and (b) of this section.

(e) The commissioner of health and human services shall determine for each power, duty, function, program, or activity scheduled for transfer:

(1) the relevant agency actions that constitute each power, duty, function, program, or activity;

(2) the relevant records, property, and equipment used by a state agency for each power, duty, function, program, or activity;

(3) the state agency employees whose duties directly or indirectly involve a power, duty, function, program, or activity; and

(4) state agency funds and obligations that are related to the power, duty, function, program, or activity.

(f) Based on the determinations made under Subsection (e) of this section, the commissioner of health and human services shall assist the agencies in transferring powers, duties, functions, programs, activities, records, equipment, property, funds, obligations, and employees in accordance with the transfer schedule.

(g) The commissioner of health and human services shall file any federal plan changes required by this section.

(h) The transfer of powers, duties, functions, programs, and activities under this section does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(i) An action brought or proceeding commenced before the effective date of this section, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the effective date of this section.

(j) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.08. USE OF PRIVATE COLLECTION AGENTS. (a) With assistance from the Council on Competitive Government and subject to approval by the attorney general under Section 2107.003, Government Code, the Texas Department of Human Services shall, in addition to other methods of collection, use private collection agents to collect reimbursements for benefits granted by the department in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code.

(b) If approved by the attorney general, the department shall ensure that the collection agents are engaged in collection work on behalf of the department not later than March 1, 1998. The department shall strive to refer approximately 20 percent of the department's claims for reimbursement to the collection agents.

(c) On March 1, 1998, and September 1, 1998, the department shall submit a progress report to the governor, the Legislative Budget Board, and the Health and Human Services Commission on the department's efforts to use private collection agents to collect reimbursements for erroneous benefits. On March 1, 1999, the department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a final report on the success of the private collection effort.

(d) Unless otherwise directed by the 76th Legislature, the department shall evaluate the success of the use of private collection agents to collect benefit reimbursements and adjust the number of claims referred to the agents, as appropriate.

SECTION 1.09. EXPEDITED FOOD STAMP DELIVERY; IMPACT ON FRAUDULENT CLAIMS. (a) The Texas Department of Human Services shall conduct a study to determine the impact of the one-day screening and service delivery requirements prescribed by Section 33.002(e), Human Resources Code, on the level of fraud in the food stamp program.

(b) Not later than January 1, 1999, the department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a report on the results of the study. The report must include:

(1) detailed statistics by region on the number of fraudulent claims linked to the one-day screening and service delivery requirements; and

(2) recommendations on modifying the one-day screening and service delivery requirements, as authorized by Section 33.002(g), Human Resources Code.

SECTION 1.10. STUDY ON COLLECTION OF ERRONEOUS FOOD STAMP OR FINANCIAL ASSISTANCE BENEFITS THROUGH LIENS OR WAGE GARNISHMENT. (a) The Texas Department of Human Services shall conduct a study to determine the feasibility of collecting amounts of benefits granted by the department in error under the food stamp program or

the program of financial assistance under Chapter 31, Human Resources Code, by the garnishment of wages or the filing of liens against property.

(b) Not later than March 1, 1999, the department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a report on the results of the study.

SECTION 1.11. OPERATION RESTORE TRUST. (a) To the extent authorized by law, the Health and Human Services Commission and the office of the attorney general shall cooperate with entities in other states that are participating in "Operation Restore Trust" and share information regarding service providers excluded from the state Medicaid program.

(b) In this section, "Operation Restore Trust" means the federal program directed at detecting health-care fraud primarily in home health care, nursing home care, and durable medical equipment in certain states.

ARTICLE 2. MEDICAID SERVICE PROVIDERS

SECTION 2.01. AUTHORIZATION FOR AMBULANCE SERVICES.

(a) Section 32.024, Human Resources Code, is amended by adding Subsection (t) to read as follows:

(t) The department by rule shall require a physician, nursing facility, health care provider, or other responsible party to obtain authorization from the department or a person authorized to act on behalf of the department before an ambulance is used to transport a recipient of medical assistance under this chapter in circumstances not involving an emergency. The rules must provide that:

(1) a request for authorization must be evaluated based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;

(2) a response to a request for authorization must be made not later than 48 hours after receipt of the request; and

(3) a person denied payment for services rendered because of failure to obtain prior authorization or because a request for prior authorization was denied is entitled to appeal the denial of payment to the department.

(b) Not later than January 1, 1998, the Health and Human Services Commission and each appropriate health and human services agency that operates part of the state Medicaid program shall adopt the rules required by Section 32.024(t), Human Resources Code, as added by this section.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 2.02. DURABLE MEDICAL EQUIPMENT.

(a) Section 32.024, Human Resources Code, is amended by adding Subsection (u) to read as follows:

(u) The department by rule shall require a health care provider who arranges for durable medical equipment for a child who receives medical assistance under this chapter to:

(1) ensure that the child receives the equipment prescribed, the equipment fits properly, if applicable, and the child or the child's parent or guardian, as appropriate considering the age of the child, receives instruction regarding the equipment's use; and

(2) maintain a record of compliance with the requirements of Subdivision (1) in an appropriate location.

(b) Not later than January 1, 1998, the Health and Human Services Commission and each appropriate health and human services agency that operates part of the state Medicaid program shall adopt the rules required by Section 32.024(u), Human Resources Code, as added by this section.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 2.03. SURETY BOND. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0321 to read as follows:

Sec. 32.0321. SURETY BOND. (a) The department by rule may require each provider of medical assistance in a provider type that has demonstrated significant potential for fraud or abuse to file with the department a surety bond in a reasonable amount.

(b) The bond must be payable to the department to compensate the department for damages resulting from or penalties or fines imposed in connection with an act of fraud or abuse committed by the provider under the medical assistance program.

SECTION 2.04. CRIMINAL HISTORY INFORMATION. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0322 to read as follows:

Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(b) The department by rule shall establish criteria for revoking a provider's enrollment or denying a person's application to enroll as a provider under the medical assistance program based on the results of a criminal history check.

(b) Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.132 to read as follows:

Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; AGENCIES OPERATING PART OF MEDICAL ASSISTANCE PROGRAM. (a) The Health and Human Services Commission or an agency operating part of the medical assistance program under Chapter 32, Human Resources Code, is entitled to obtain from the department the criminal history record information maintained by the department that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(b) Criminal history record information obtained by the commission or an agency under Subsection (a) may not be released or disclosed to any person except in a criminal proceeding, in an administrative proceeding, on court order, or with the consent of the provider or applicant.

SECTION 2.05. MANAGED CARE ORGANIZATIONS. (a) Section 16A, Article 4413(502), Revised Statutes, is amended by amending Subsection (n) and adding Subsections (o)-(t) to read as follows:

(n) A managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals shall:

(1) report to the commission or the state's Medicaid claims administrator, as appropriate, all information required by commission rule, including information necessary to set rates, detect fraud, neglect, and physical abuse, and ensure quality of care;

(2) not later than 30 days after execution of the contract, develop and submit to the operating agency for approval by the commission a plan for preventing, detecting, and reporting fraud and abuse that:

(A) conforms to guidelines developed by the operating agency with assistance from the commission and the office of the attorney general; and

(B) requires the managed care organization to report any known or suspected act of fraud or abuse to the operating agency for referral to the commission for investigation;

(3) include standard provisions developed by the operating agency in each contract for ancillary services entered into by the managed care organization that affects the delivery of or payment for Medicaid services;

(4) submit to the commission for approval each contract for ancillary services entered into by the managed care organization that affects the delivery of or payment for Medicaid services; and

(5) submit annual disclosure statements to the commission containing information on:

(A) the financial condition of the managed care organization and each of its affiliates; and

(B) ownership interests in the managed care organization or any of its affiliates.

(o) The operating agency shall require that each contract between a managed care organization and the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals contain provisions:

(1) stating that information provided by a managed care organization under this section may be used as necessary to detect fraud and abuse;

(2) specifying the responsibilities of the managed care organization in reducing fraud and abuse; and

(3) authorizing specific penalties for failure to provide information required by commission rules.

(p) At least once every three years the operating agency shall audit each managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals.

(q) A managed care organization audited under Subsection (p) of this section is responsible for paying the costs of the audit. The costs of the audit may be allowed as a credit against premium taxes paid by the managed care organization, except as provided by Section 2, Article 1.28, Insurance Code.

(r) The operating agency and the Texas Department of Insurance shall enter into a memorandum of understanding to coordinate audits of managed care organizations. The memorandum shall:

(1) identify information required in an operating agency audit that is not customarily required in a department audit;

(2) encourage the department to include to the extent possible information identified under Subdivision (1) of this subsection in department audits;

(3) establish procedures for initiating and distributing the findings of audits of a managed care organization;

(4) identify the records of physicians or Medicaid eligible individuals that are served by managed care organizations, that are subject to audit; and

(5) require that operating agency and department personnel that audit a managed care organization receive specific training in detecting Medicaid fraud and abuse.

(s) In this section, "operating agency" means the appropriate health and human services agency operating part of the state Medicaid program.

(t) This section expires September 1, 2001.

(b) Section 532.001, Government Code, as added by H.B. No. 1845 or S.B. No. 898, Acts of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes, is amended by adding Subdivision (5) to read as follows:

(5) "Operating agency" means the appropriate health and human services agency operating part of the state Medicaid program.

(c) Subchapter B, Chapter 532, Government Code, as added by H.B. No. 1845 or S.B. No. 898, Acts of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes, is amended by adding Sections 532.112 and 532.113 to read as follows:

Sec. 532.112. DUTIES OF MANAGED CARE ORGANIZATION: CONTRACTUAL PROVISIONS. (a) A managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals shall:

(1) report to the commission or the state's Medicaid claims administrator, as appropriate, all information required by commission rule, including information necessary to set rates, detect fraud, neglect, and physical abuse, and ensure quality of care;

(2) not later than 30 days after execution of the contract, develop and submit to the operating agency for approval by the commission a plan for preventing, detecting, and reporting fraud and abuse that:

(A) conforms to guidelines developed by the operating agency with assistance from the commission and the office of the attorney general; and

(B) requires the managed care organization to report any known or suspected act of fraud or abuse to the operating agency for referral to the commission for investigation;

(3) include standard provisions developed by the operating agency in each contract for ancillary services entered into by the managed care organization that affects the delivery of or payment for Medicaid services;

(4) submit to the commission for approval each contract for ancillary services entered into by the managed care organization that affects the delivery of or payment for Medicaid services; and

(5) submit annual disclosure statements to the commission containing information on:

(A) the financial condition of the managed care organization and each of its affiliates; and

(B) ownership interests in the managed care organization or any of its affiliates.

(b) The operating agency shall require that each contract between a managed care organization and the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals contain provisions:

(1) stating that information provided by a managed care organization under this section may be used as necessary to detect fraud and abuse;

(2) specifying the responsibilities of the managed care organization in reducing fraud and abuse; and

(3) authorizing specific penalties for failure to provide information required by commission rules.

Sec. 532.113. AUDITS; MEMORANDUM OF UNDERSTANDING.

(a) At least once every three years the operating agency shall audit each managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals.

(b) A managed care organization audited under Subsection (a) is responsible for paying the costs of the audit. The costs of the audit may be allowed as a credit against premium taxes paid by the managed care organization, except as provided by Section 2, Article 1.28, Insurance Code.

(c) The operating agency and the Texas Department of Insurance shall enter into a memorandum of understanding to coordinate audits of managed care organizations. The memorandum shall:

(1) identify information required in an operating agency audit that is not customarily required in a department audit;

(2) encourage the department to include to the extent possible information identified under Subdivision (1) in department audits;

(3) establish procedures for initiating and distributing the findings of audits of a managed care organization;

(4) identify the records of physicians or Medicaid eligible individuals that are served by managed care organizations that are subject to audit; and

(5) require that operating agency and department personnel that audit a managed care organization receive specific training in detecting Medicaid fraud and abuse.

(d) Not later than November 1, 1997, the Texas Department of Health or the appropriate health and human services agency operating part of the state Medicaid program shall develop guidelines applicable to a managed care organization's plan for preventing, detecting, and reporting Medicaid fraud.

(e) Section 16A(n)(2), Article 4413(502), Revised Statutes, as amended by this section, or Section 532.112(a)(2), Government Code, as added by this section, depending on which provision takes effect, applies only to a managed care organization that enters into a contract or renews a contract on or after November 1, 1997, with the state to provide or arrange to provide health care benefits to Medicaid eligible individuals.

(f) This section applies only to a contract entered into or renewed on or after the effective date of this section. A contract entered into or renewed before the effective date of this section is governed by the law in effect immediately before the effective date of this section, and the former law is continued in effect for that purpose.

(g) A managed care organization that contracts with the state to provide or arrange to provide health care benefits to Medicaid eligible individuals before the effective date of this section is not required by this section to:

(1) include standard provisions developed by the state in a contract for ancillary services executed before the effective date of this section;

(2) submit a contract for ancillary services executed before the effective date of this section to the commission for approval; or

(3) modify a contract between the managed care organization and the state executed before the effective date of this section.

(h) A managed care organization that renews a contract subject to this section after the effective date of this section shall include in the renewed contract all provisions required to be included by this section.

(i) Subsection (a) of this section takes effect only if neither H.B. No. 1845 nor S.B. No. 898, Acts of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes, take effect.

(j) Subsections (b) and (c) of this section take effect only if H.B. No. 1845 or S.B. No. 898, Acts of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes, takes effect.

SECTION 2.06. PILOT PROGRAM; ON-SITE REVIEWS OF PROSPECTIVE PROVIDERS. (a) The Health and Human Services Commission by rule shall establish a pilot program to reduce fraud by conducting random on-site reviews of persons who apply to provide health care services under the state Medicaid program before authorizing those persons to provide the services.

(b) The commission shall implement the pilot program initially in not more than five or fewer than three urban counties selected by the commission. The commission shall select counties for the pilot program that:

(1) offer the greatest potential for achieving a reduction of provider fraud; and

(2) contain established field offices of the commission or the Texas Department of Human Services, as appropriate.

(c) At a minimum, the pilot program shall provide for random on-site reviews of durable medical equipment providers, home health providers, therapists, and laboratories. The commission may include other groups of providers in the pilot program.

(d) The commission shall develop questions to be used during an on-site review of a prospective provider to verify that the provider has the ability to provide the proposed services.

(e) The on-site reviews shall be conducted by personnel in the appropriate field offices of the commission or the Texas Department of Human Services.

(f) The commission may waive an on-site review of a prospective provider if the provider has been subject to a comparable review by a certifying body in the preceding year.

(g) If the pilot program is successful in reducing provider fraud in the counties initially selected under Subsection (b) of this section, the commission may expand the pilot program to include additional counties.

(h) Not later than January 15, 1999, the commission shall submit to the governor and the legislature a report concerning the effectiveness of the pilot program that includes:

(1) the number of applications denied as a result of an on-site review; and

(2) recommendations on expanding the pilot program.

(i) This section expires September 1, 1999.

SECTION 2.07. DEVELOPMENT OF NEW PROVIDER CONTRACT.

(a) As soon as possible after the effective date of this section, the Health and Human Services Commission shall develop a new provider contract for health care services that contains provisions designed to strengthen the commission's ability to prevent provider fraud under the state Medicaid program.

(b) In developing the new provider contract, the commission shall solicit suggestions and comments from representatives of providers in the state Medicaid program.

(c) As soon as possible after development of the new provider contract, the commission and each agency operating part of the state Medicaid program by rule shall require each provider who enrolled in the program before completion of the new contract to reenroll in the program under the new contract or modify the provider's existing contract in accordance with commission or agency procedures as necessary to comply with the requirements of the new contract. A provider must reenroll in the state Medicaid program or make the necessary contract modifications not later than September 1, 1999, to retain eligibility to participate in the program.

SECTION 2.08. COMPETITIVE PROCESS FOR OBTAINING DURABLE MEDICAL EQUIPMENT. (a) As soon as possible and not later than the 45th day after the effective date of this section:

(1) the Texas Department of Health shall develop a process for selecting providers of durable medical equipment and supplies that encourages competition; and

(2) the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan authorizing implementation of the process developed by the Texas Department of Health.

(b) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 2.09. REVIEW OF SERVICE PROVIDER BILLING PRACTICES. (a) The Texas Department of Health shall conduct an automated review of physician, laboratory, radiology, and other health care provider services to identify improper billing practices designed to inflate a service provider's claim for payment for services provided under the state Medicaid program.

(b) After completing the review required by Subsection (a) of this section, the Texas Department of Health shall:

(1) refer each identified improper billing practice to the Health and Human Services Commission's office of investigations and enforcement; and

(2) require the entity that administers the state Medicaid program on behalf of the department to modify the entity's claims processing and monitoring procedures and computer technology as necessary to prevent improper billing by service providers.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

ARTICLE 3. ADMINISTRATIVE PENALTIES AND SANCTIONS
RELATING TO MEDICAID FRAUD

SECTION 3.01. ADMINISTRATIVE PENALTIES. (a) Section 32.039, Human Resources Code, is amended to read as follows:

Sec. 32.039. ~~[CIVIL]~~ DAMAGES AND PENALTIES. (a) In this section:

(1) "Claim" ~~["claim"]~~ means an application for payment of health care services under Title XIX of the federal Social Security Act that is submitted by a person who is under a contract or provider agreement with the department.

(2) "Managed care organization" means any entity or person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan.

(3) "Managed care plan" means a plan under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows to be false; or

(2) is a managed care organization that contracts with the department to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the department;

(B) fails to provide to the department information required to be provided by law, department rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the department; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the department, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the department.

(c) ~~[(b)]~~ A person who commits a violation under Subsection (b) ~~[presents or causes to be presented to the department a claim that contains a statement or representation the person knows to be false]~~ is liable to the department for:

(1) the amount paid, if any, as a result [because] of the violation [false claim] and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative [a civil] penalty of an amount not to exceed twice the amount paid, if any, as a result [because] of the violation, plus an amount;

(A) not less than \$5,000 or more than \$15,000 for each violation that results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age; or

(B) not more than \$10,000 for each violation that does not result in injury to a person described by Paragraph (A) [false claim; and

[(3) payment of a civil penalty of not more than \$2,000 for each item or service for which payment was claimed].

(d) ~~[(c)]~~ Unless the provider submitted information to the department for use in preparing a voucher that the provider knew was false or failed to correct information that the provider knew was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the department calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The department shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the department may be corrected without penalty to the provider.

(e) ~~[(d)]~~ In determining the amount of the penalty to be assessed under Subsection (c)(2) [Subdivision (3) of Subsection (b) of this section], the department shall consider:

(1) the seriousness of the violation;

(2) whether the person had previously committed a violation [submitted false claims]; and

(3) the amount necessary to deter the person from committing [submitting] future violations [false claims].

(f) ~~[(e)]~~ If after an examination of the facts the department concludes that the person committed a violation [did submit a false claim], the department may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative [a civil] penalty under this section be imposed and recommending the amount of the proposed penalty.

(g) ~~[(f)]~~ The department shall give written notice of the report to the person charged with committing the violation ~~[submitting the false claim]~~. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the alleged violation ~~[false claim]~~, the amount of the penalty, or both the alleged violation ~~[false claim]~~ and the amount of the penalty.

(h) ~~[(g)]~~ Not later than the 10th day after the date on which the person charged with committing the violation ~~[submitting the false claim]~~ receives the notice, the person may either give the department written consent to the report, including the recommended penalty, or make a written request for an informal review by the department.

(i) ~~[(h)]~~ If the person charged with committing the violation ~~[submitting the false claim]~~ consents to the penalty recommended by the department or fails to timely request an informal review, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) ~~[(i)]~~ If the person charged with committing the violation ~~[submitting a false claim]~~ requests an informal review as provided by Subsection (h) ~~[(g) of this section]~~, the department shall conduct the review. The department shall give the person written notice of the results of the review.

(k) ~~[(j)]~~ Not later than the 10th day after the date on which the person charged with committing the violation ~~[submitting the false claim]~~ receives the notice prescribed by Subsection (j) ~~[(i) of this section]~~, the person may make to the department a written request for a hearing. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(l) ~~[(k)]~~ If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(m) Within 30 days after the date on which the board's order issued after a hearing under Subsection (k) becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(n) A person who acts under Subsection (m)(3) within the 30-day period may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(o) If the commissioner receives a copy of an affidavit under Subsection (n)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(p) [(t) Except as provided by Subsection (m) of this section, not later than 30 days after the date on which the department issues a final decision after a hearing under Subsection (j) of this section, a person who has been ordered to pay a penalty under this section shall pay the penalty in full:

[(m) If the person seeks judicial review of either the fact of the submission of a false claim or the amount of the penalty or of both the fact of the submission and the amount of the penalty, the person shall forward the amount of the penalty to the department for placement in an escrow account or, instead of payment into an escrow account, post with the department a supersedeas bond in a form approved by the department for the amount of the penalty. The bond must be effective until all judicial review of the order or decision is final:

[(n) Failure to forward the money to or to post the bond with the department within the period provided by Subsection (l) or (m) of this section results in a waiver of all legal rights to judicial review:] If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed [fails to forward the money or post the bond within the period provided by Subsection (h), (k), (l), or (m) of this section], the department may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in [from] which the violation [false claim] was committed [submitted].

(q) [(o)] Judicial review of a department order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) [(p)] If a penalty is reduced or not assessed, the department shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the department

under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the department under this section and ending on the date the penalty is remitted.

(s) [(q)] A damage, cost, or penalty collected under this section is not an allowable expense in a claim or cost report that is or could be used to determine a rate or payment under the medical assistance program.

(t) [(r)] All funds collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(u) A person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The department by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(v) A person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The department by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(b) The change in law made by this section applies only to a violation committed on or after the effective date of this section. For purposes of this subsection, a violation is committed on or after the effective date of this section only if each element of the violation occurs on or after that date. A violation committed before the effective date of this section is covered by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 3.02. SANCTIONS APPLICABLE TO VENDOR DRUG PROGRAM. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.046 to read as follows:

Sec. 32.046. VENDOR DRUG PROGRAM; SANCTIONS AND PENALTIES. (a) The department shall adopt rules governing sanctions and penalties that apply to a provider in the vendor drug program who submits an improper claim for reimbursement under the program.

(b) The department shall notify each provider in the vendor drug program that the provider is subject to sanctions and penalties for submitting an improper claim.

SECTION 3.03. PROHIBITION OF CERTAIN PERSONS CONVICTED OF FRAUD. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.047 to read as follows:

Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE PROVIDERS. A person is permanently prohibited from providing or arranging to provide health care services under the medical assistance program if:

(1) the person is convicted of an offense arising from a fraudulent act under the program; and

(2) the person's fraudulent act results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age.

SECTION 3.04. DEDUCTIONS FROM LOTTERY WINNINGS.

(a) Sections 466.407(a) and (c), Government Code, are amended to read as follows:

(a) The executive director shall deduct the amount of a delinquent tax or other money from the winnings of a person who has been finally determined to be:

(1) delinquent in the payment of a tax or other money collected by the comptroller[~~, the state treasurer,~~] or the Texas Alcoholic Beverage Commission;

(2) delinquent in making child support payments administered or collected by the attorney general;

(3) delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

(4) in default on a loan made under Chapter 52, Education Code; or

(5) ~~(4)~~ in default on a loan guaranteed under Chapter 57, Education Code.

(c) The attorney general, comptroller, ~~[state treasurer,~~] Texas Alcoholic Beverage Commission, Texas Department of Human Services, Texas Higher Education Coordinating Board, and Texas Guaranteed Student Loan Corporation shall each provide the executive director with a report of persons who have been finally determined to be delinquent in the payment of a tax or other money collected by the agency. The commission shall adopt rules regarding the form and frequency of reports under this subsection.

(b) The Texas Department of Human Services shall take all action necessary to implement the change in law made by this section not later than January 1, 1998. The department may not seek recovery through lottery prize deduction of an amount of a benefit granted in error to a person under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, before September 1, 1997.

(c) The executive director of the Texas Lottery Commission is not required under Section 466.407, Government Code, as amended by this section, to deduct from lottery prizes erroneous amounts granted to lottery winners by the Texas Department of Human Services until the department provides to the commission all necessary information and reports required for implementation of that section.

**ARTICLE 4. CIVIL REMEDIES RELATING TO MEDICAID FRAUD
AND CREATION OF CRIMINAL OFFENSE**

SECTION 4.01. REDESIGNATION. (a) Chapter 36, Human Resources Code, is amended by designating Sections 36.001, 36.002, 36.007, 36.008,

36.009, 36.010, 36.011, and 36.012 as Subchapter A, renumbering Sections 36.007, 36.008, 36.009, 36.010, 36.011, and 36.012 as Sections 36.003, 36.004, 36.005, 36.006, 36.007, and 36.008, respectively, and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

(b) Chapter 36, Human Resources Code, is amended by designating Sections 36.003, 36.004, 36.005, and 36.006 as Subchapter B, renumbering those sections as Sections 36.051, 36.052, 36.053, and 36.054, respectively, and adding a subchapter heading to read as follows:

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

SECTION 4.02. DEFINITIONS. Section 36.001, Human Resources Code, is amended by amending Subdivisions (5)-(11) and adding Subdivision (12) to read as follows:

(5) "Managed care organization" has the meaning assigned by Section 32.039(a).

(6) "Medicaid program" means the state Medicaid program.

(7) [(6)] "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

(8) [(7)] "Physician" means a physician licensed to practice medicine in this state.

(9) [(8)] "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent; ~~and~~

(C) an employee of a provider; and

(D) a managed care organization.

(10) [(9)] "Service" includes care or treatment of a Medicaid recipient.

(11) [(10)] "Signed" means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(12) [(11)] "Unlawful act" means an act declared to be unlawful under Section 36.002.

SECTION 4.03. UNLAWFUL ACTS RELATING TO MANAGED CARE ORGANIZATION. Section 36.002, Human Resources Code, is amended to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly or intentionally makes or causes to be made a false statement or misrepresentation of a material fact:

(A) on an application for a contract, benefit, or payment under the Medicaid program; or

(B) that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program;

(2) knowingly or intentionally conceals or fails to disclose an event:

(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of:

(i) the person; or

(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and

(B) to permit a person to receive a benefit or payment that is not authorized or that is greater than the payment or benefit that is authorized;

(3) knowingly or intentionally applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly or intentionally makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) a personal care facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly or intentionally charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or continued service to a Medicaid recipient if the cost of the service provided to the Medicaid recipient is paid for, in whole or in part, under the Medicaid program;

(6) knowingly or intentionally presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly or intentionally makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly or intentionally fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service; ~~or~~

(9) knowingly or intentionally enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent; or

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly or intentionally:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program; or

(D) obstructs an investigation by the attorney general of an alleged unlawful act under this section.

SECTION 4.04. APPLICABLE PENALTIES AND CONFORMING AMENDMENT. Section 36.004, Human Resources Code, as renumbered by this article as Section 36.052, is amended by amending Subsections (a) and (c) to read as follows:

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) restitution of the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act;

(2) interest on the value of the payment or benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that restitution is paid to the state;

(3) a civil penalty of:

(A) not less than \$5,000 or more than \$15,000 for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age; or

(B) not less than \$1,000 or more than \$10,000 for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the value of the payment or benefit described by Subdivision (1).

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051 ~~[36.003]~~; or

(2) institute an action for civil remedies independently of an action for injunctive relief.

SECTION 4.05. CONFORMING AMENDMENT. Section 36.005, Human Resources Code, as renumbered by this article as Section 36.053, is amended by amending Subsection (b) to read as follows:

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act; and

(3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.054 ~~[36.006]~~.

SECTION 4.06. ADDITIONAL SANCTIONS FOR MEDICAID FRAUD. Section 36.009, Human Resources Code, as renumbered by this article as Section 36.005, is amended to read as follows:

Sec. 36.005 ~~[36.009]~~. SUSPENSION OR REVOCATION OF AGREEMENT; PROFESSIONAL DISCIPLINE. (a) The commissioner of human services, the commissioner of public health, the commissioner of mental health and mental retardation, the executive director of the Department of Protective and Regulatory Services, or the executive director of another state health care regulatory agency:

(1) shall suspend or revoke:

(A) a provider agreement between the department or agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the department or agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) ~~[(1)]~~ a provider agreement between the department or agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052 ~~[36.004]~~; or

(B) ~~[(2)]~~ a permit, license, or certification granted by the department or agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052 ~~[36.004]~~.

(b) A person found liable under Section 36.052 for an unlawful act may not provide or arrange to provide health care services under the Medicaid program for a period of 10 years. The board of a state agency that operates part of the Medicaid program may by rule provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C.

SECTION 4.07. AUTHORITY OF ATTORNEY GENERAL. (a) Subchapter B, Chapter 36, Human Resources Code, as designated by this article, is amended by adding Section 36.055 to read as follows:

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. To the extent permitted by 31 U.S.C. Sections 3729-3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with the Medicaid program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section.

(b) The office of the attorney general shall develop strategies to increase state recoveries under 31 U.S.C. Sections 3729-3733. The office shall report the results of the office's effort to the legislature not later than September 1, 1998.

SECTION 4.08. CIVIL ACTION BY PRIVATE PERSON FOR MEDICAID FRAUD. Chapter 36, Human Resources Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

Sec. 36.101. ACTION BY PRIVATE PERSON AUTHORIZED. (a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the person and of the state.

(b) In an action brought under this subchapter, a person who violates Section 36.002 is liable as provided by Section 36.052.

Sec. 36.102. INITIATION OF ACTION. (a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and shall remain under seal until at least the 60th day after the date the petition is filed. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 60th day after the date the attorney general receives the petition and the material evidence and information.

(d) The state may, for good cause shown, move the court to extend the time during which the petition remains under seal under Subsection (b). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed before the end of the period prescribed by Subsection (b), as extended as provided by Subsection (d), if applicable, only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

Sec. 36.103. ANSWER BY DEFENDANT. A defendant is not required to file an answer to a petition filed under this subchapter until the 20th day after the date the petition is unsealed and served on the defendant in compliance with the Texas Rules of Civil Procedure.

Sec. 36.104. CONTINUATION OR DISMISSAL OF ACTION BASED ON STATE DECISION. (a) Not later than the last day of the period prescribed by Section 36.102(c), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the court shall dismiss the action.

Sec. 36.105. REPRESENTATION OF STATE BY PRIVATE ATTORNEY. The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed.

Sec. 36.106. INTERVENTION BY OTHER PARTIES PROHIBITED. A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.

Sec. 36.107. RIGHTS OF PARTIES IF STATE CONTINUES ACTION. (a) If the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

(1) the attorney general notifies the person that the state has filed a motion to dismiss; and

(2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of witnesses called by the person;

(3) limiting the person's cross-examination of witnesses; or

(4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for

purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

Sec. 36.108. STAY OF CERTAIN DISCOVERY. (a) On a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.

(b) The court shall hear a motion to stay discovery under this section in camera.

(c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

Sec. 36.109. PURSUIT OF ALTERNATE REMEDY BY STATE. (a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.

(b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:

(1) the finding or conclusion has been finally determined on appeal to the appropriate court;

(2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or

(3) the finding or conclusion is not subject to judicial review.

Sec. 36.110. AWARD TO PRIVATE PLAINTIFF. (a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 10 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

(b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than seven percent of the proceeds of the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive an amount for reasonable expenses that the court finds

to have been necessarily incurred, plus reasonable attorney's fees and costs. Expenses, fees, and costs shall be awarded against the defendant.

(d) In this section, "proceeds of the action" includes proceeds of a settlement of the action.

Sec. 36.111. REDUCTION OF AWARD. (a) If the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.110, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

Sec. 36.112. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION. Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

Sec. 36.113. CERTAIN ACTIONS BARRED. (a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this subchapter that is based on the information.

Sec. 36.114. STATE NOT LIABLE FOR CERTAIN EXPENSES. The state is not liable for expenses that a person incurs in bringing an action under this subchapter.

Sec. 36.115. RETALIATION BY EMPLOYER AGAINST PERSON BRINGING SUIT PROHIBITED. (a) A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section.

Sec. 36.116. SOVEREIGN IMMUNITY NOT WAIVED. Except as provided by Section 36.112, this subchapter does not waive sovereign immunity.

Sec. 36.117. ATTORNEY GENERAL COMPENSATION. The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General Appropriations Act, for the administration of this subchapter.

SECTION 4.09. CRIMINAL OFFENSE AND REVOCATION OF CERTAIN LICENSES. Chapter 36, Human Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CRIMINAL PENALTIES

AND REVOCATION OF CERTAIN OCCUPATIONAL LICENSES

Sec. 36.131. CRIMINAL OFFENSE. (a) A person commits an offense if the person commits an unlawful act under Section 36.002.

(b) An offense under this section is:

(1) a Class C misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is less than \$50;

(2) a Class B misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the actor may be prosecuted under either this section or the other provision.

(d) When multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

Sec. 36.132. REVOCATION OF LICENSES. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

- (A) is issued by a licensing authority;
- (B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and
- (C) must be obtained before a person may practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means:

- (A) the Texas State Board of Medical Examiners;
- (B) the State Board of Dental Examiners;
- (C) the Texas State Board of Examiners of Psychologists;
- (D) the Texas State Board of Social Worker Examiners;
- (E) the Board of Nurse Examiners;
- (F) the Board of Vocational Nurse Examiners;
- (G) the Texas Board of Physical Therapy Examiners;
- (H) the Texas Board of Occupational Therapy Examiners; or
- (I) another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 36.131. In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses.

SECTION 4.10. APPLICATION. (a) The changes in law made by this article apply only to a violation committed on or after the effective date of this article. For purposes of this section, a violation is committed on or after the effective date of this article only if each element of the violation occurs on or after that date.

(b) A violation committed before the effective date of this article is covered by the law in effect when the violation was committed, and the former law is continued in effect for this purpose.

ARTICLE 5. SUSPENSION OF LICENSES

SECTION 5.01. SUSPENSION OF LICENSES. (a) Subtitle B, Title 2, Human Resources Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL
LICENSE FOR FAILURE TO REIMBURSE DEPARTMENT

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

- (A) is issued by a licensing authority;
- (B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and
- (C) a person must obtain to:
 - (i) operate a motor vehicle; or
 - (ii) engage in a recreational activity, including hunting and fishing, for which a license or permit is required.

(2) "Order suspending a license" means an order issued by the department directing a licensing authority to suspend a license.

Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In this chapter, "licensing authority" means:

(1) the Parks and Wildlife Department; and

(2) the Department of Public Safety of the State of Texas.

Sec. 23.003. SUSPENSION OF LICENSE. The department may issue an order suspending a license as provided by this chapter of a person who, after notice:

(1) has failed to reimburse the department for an amount in excess of \$250 granted in error to the person under the food stamp program or the program of financial assistance under Chapter 31;

(2) has been provided an opportunity to make payments toward the amount owed under a repayment schedule; and

(3) has failed to comply with the repayment schedule.

Sec. 23.004. INITIATION OF PROCEEDING. (a) The department may initiate a proceeding to suspend a person's license by filing a petition with the department's hearings division.

(b) The proceeding shall be conducted by the department's hearings division. The proceeding is a contested case under Chapter 2001, Government Code, except that Section 2001.054 does not apply.

(c) The commissioner or the commissioner's designated representative shall render a final decision in the proceeding.

Sec. 23.005. CONTENTS OF PETITION. A petition under this chapter must state that license suspension is authorized under Section 23.003 and allege:

(1) the name and, if known, social security number of the person;

(2) the type of license the person is believed to hold and the name of the licensing authority; and

(3) the amount owed to the department.

Sec. 23.006. NOTICE. (a) On initiating a proceeding under Section 23.004, the department shall give the person named in the petition:

(1) notice of the person's right to a hearing before the hearings division of the department;

(2) notice of the deadline for requesting a hearing; and

(3) a form requesting a hearing.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending a license shall be rendered on the 60th day after the date of service of the notice unless by that date:

(1) the person pays the amount owed to the department;

(2) the person presents evidence of a payment history satisfactory to the department in compliance with a reasonable repayment schedule; or

(3) the person appears at a hearing before the hearings division and shows that the request for suspension should be denied or stayed.

Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A request for a hearing and motion to stay suspension must be filed with the department not later than the 20th day after the date of service of the notice under Section 23.006.

(b) If a request for a hearing is filed, the hearings division of the department shall:

- (1) promptly schedule a hearing;
- (2) notify the person and an appropriate representative of the department of the date, time, and location of the hearing; and
- (3) stay suspension pending the hearing.

Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making the findings required by Section 23.003, the department shall render an order suspending a license.

(b) The department may stay an order suspending a license conditioned on the person's compliance with a reasonable repayment schedule that is incorporated in the order. An order suspending a license with a stay of the suspension may not be served on the licensing authority unless the stay is revoked as provided by this chapter.

(c) A final order suspending a license rendered by the department shall be forwarded to the appropriate licensing authority.

(d) If the department renders an order suspending a license, the person may also be ordered not to engage in the licensed activity.

(e) If the department finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending a license may not be rendered.

Sec. 23.009. DEFAULT ORDER. The department shall consider the allegations of the petition for suspension to be admitted and shall render an order suspending a license if the person fails to:

- (1) respond to a notice issued under Section 23.006;
- (2) request a hearing; or
- (3) appear at a hearing.

Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An order issued by the department under this chapter is a final agency decision and is subject to review as provided by Chapter 2001, Government Code.

Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt of a final order suspending a license, the licensing authority shall immediately determine if the authority has issued a license to the person named on the order and, if a license has been issued:

- (1) record the suspension of the license in the licensing authority's records;
- (2) report the suspension as appropriate; and
- (3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending a license without additional review or hearing. The authority may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending a license issued under this chapter and may not review, vacate, or reconsider the terms of a final order suspending a license.

(d) A person who is the subject of a final order suspending a license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) A person who continues to engage in the licensed activity after the implementation of the order suspending a license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending a license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by Subtitle B, Title 7, Transportation Code.

Sec. 23.012. MOTION TO REVOKE STAY. (a) The department may file a motion with the department's hearings division to revoke the stay of an order suspending a license if the person does not comply with the terms of a reasonable repayment plan entered into by the person.

(b) Notice to the person of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the person, if any, in the order suspending a license. The notice must include a notice of hearing before the hearings division. The notice must be provided to the person not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the person failed to comply with the repayment plan.

(d) If the department finds that the person is not in compliance with the terms of the repayment plan, the department shall revoke the stay of the order suspending a license and render a final order suspending a license.

Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING A LICENSE. (a) The department may render an order vacating or staying an order suspending a license if the person has paid all amounts owed to the department or has established a satisfactory payment record.

(b) The department shall promptly deliver an order vacating or staying an order suspending a license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspending a license, the licensing authority shall promptly reinstate and return the affected license to the person if the person is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the department to any other remedy provided by law, including the right to seek relief under this chapter. An order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing authority may charge a fee to a person who is the subject of an order suspending a license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND DEPARTMENT. (a) The department may request from each licensing

authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the manner agreed to by the department and the licensing authority.

(c) The department may enter into a cooperative agreement with a licensing authority to administer this chapter in a cost-effective manner.

(d) The department may adopt a reasonable implementation schedule for the requirements of this section.

Sec. 23.016. RULES, FORMS, AND PROCEDURES. The department by rule shall prescribe forms and procedures for the implementation of this chapter.

(b) The Texas Department of Human Services shall take all action necessary to implement the change in law made by this article not later than January 1, 1998. The department may not suspend a license because of a person's failure to reimburse the department for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, before September 1, 1997.

ARTICLE 6. MEASUREMENT OF FRAUD

SECTION 6.01. HEALTH CARE FRAUD STUDY. (a) Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.026 to read as follows:

Sec. 403.026. HEALTH CARE FRAUD STUDY. (a) The comptroller shall conduct a study each biennium to determine the number and type of fraudulent claims for medical or health care benefits submitted:

(1) under the state Medicaid program;

(2) under group health insurance programs administered through the Employees Retirement System of Texas for active and retired state employees; or

(3) by or on behalf of a state employee and administered by the attorney general under Chapter 501, Labor Code.

(b) A state agency that administers a program identified by Subsection (a) shall cooperate with the comptroller and provide any information required by the comptroller in connection with the study. A state agency may enter into a memorandum of understanding with the comptroller regarding the use and confidentiality of the information provided. This subsection does not require a state agency to provide confidential information if release of the information is prohibited by law.

(c) The comptroller shall report the results of the study to each state agency that administers a program included in the study so that the agency may modify its fraud control procedures as necessary.

(b) The comptroller of public accounts shall complete the initial study required by Section 403.026, Government Code, as added by this section, not later than December 1, 1998.

SECTION 6.02. COMPILATION OF STATISTICS. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0215 to read as follows:

Sec. 531.0215. COMPILATION OF STATISTICS RELATING TO FRAUD. The commission and each health and human services agency that

administers a part of the state Medicaid program shall maintain statistics on the number, type, and disposition of fraudulent claims for benefits submitted under the part of the program the agency administers.

(b) Subchapter C, Chapter 501, Labor Code, is amended by adding Section 501.0431 to read as follows:

Sec. 501.0431. COMPILATION OF STATISTICS RELATING TO FRAUD. The director shall maintain statistics on the number, type, and disposition of fraudulent claims for medical benefits under this chapter.

(c) Section 17(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The trustee shall:

(1) make a continuing study of the operation and administration of this Act, including surveys and reports of group coverages and benefits available to employees and on the experience thereof; and

(2) maintain statistics on the number, type, and disposition of fraudulent claims for benefits under this Act.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Sec. 7.01. THEFT BY GOVERNMENT CONTRACTOR.

(a) Section 31.03(f), Penal Code, is amended to read as follows:

(f) An offense described for purposes of punishment by Subsections (e)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense[;] and

[(2)] the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant; or

(2) the actor was in a contractual relationship with government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship.

(b) The changes in law made by this section apply only to an offense committed on or after the effective date of this section. For purposes of this section, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

(c) An offense committed before the effective date of this section is covered by the law in effect at the time the offense was committed.

ARTICLE 8. WAIVERS; EFFECTIVE DATE; EMERGENCY

SECTION 8.01. WAIVERS. If before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 8.02. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 1997.

SECTION 8.03. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Friday, May 30, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 146, In memory of James T. "Happy" Shahan.

SCR 3, Granting Dr. Helen Li permission to sue the state and The University of Texas Medical School at Houston.
(Amended)

SCR 29, Granting Benita Fogarty permission to sue the State of Texas and the Texas Department of Criminal Justice.

SCR 71, Granting Orian R. Gardner permission to sue the State of Texas and the Texas Department of Transportation.
(Amended)

SCR 75, Authorizing the creation of a commission to study the creation of an institution of higher education to be located in the southern portion of the County of Dallas.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 99 (139 Yeas 1 Nay 1 Present-not voting)

HB 629 (134 Yeas 11 Nays 1 Present-not voting)

HB 1820 (Viva-voce vote)

HB 2133 (Viva-voce vote)

HB 2252 (107 Yeas 33 Nays 1 Present-not voting)

HB 2913 (134 Yeas 0 Nays 1 Present-not voting)

HB 2948 (133 Yeas 0 Nays 3 Present-not voting)

HB 3061 (Viva-voce vote)

HB 3234 (136 Yeas 0 Nays 1 Present-not voting)

HJR 104 (137 Yeas 0 Nays 1 Present-not voting)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 2697

House Conferees: Gallego - Chair/Hernandez/Pitts/Puente/Roman

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 133

House Conferees: Dutton - Chair/Goodman/Hochberg/Sadler/Williamson

SB 360

House Conferees: Stiles - Chair/Gray/Hightower/Telford/Wilson

SB 1100

House Conferees: Jones, Delwin - Chair/Patterson, L.P. "Pete"/Pickett/Place/Staples

SB 1425

House Conferees: Horn - Chair/Turner, Bob/Holzheuser/Denny/Ramsay

SB 1563

House Conferees: Hartnett - Chair/Clark/Reyna, Arthur/Thompson/Zbraneck

SB 1873

House Conferees: Hochberg - Chair/Hernandez/Price/Rhodes/Sadler

SB 1898

House Conferees: Junell - Chair/Delisi/Greenberg/Krusee/Pitts

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 311 (141 Yeas 0 Nays 1 Present-not voting)

HB 2017 (145 Yeas 0 Nays 1 Present-not voting)

HB 2339 (Viva-voce vote)

HB 3019 (Viva-voce vote)

SB 1865 (Viva-voce vote)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 1856 (138 Yeas 0 Nays 2 Present-not voting)

HB 3263 (Viva-voce vote)

THE HOUSE HAS RECOMMITTED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

HB 2846 (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

MEMORIAL RESOLUTION

SR 930 - by Truan: In memory of Marilyn Nelson of Denton County.

CONGRATULATORY RESOLUTIONS

SR 936 - by Ellis: Congratulating Avis LaVelle.

SR 937 - by Ellis: Congratulating the Houston Area Chapter of Blacks in Government.

SR 941 - by Truan: Congratulating Esperanza and Raul Vasquez of Corpus Christi.

SR 943 - by Galloway: Congratulating the University of Houston-Downtown.

SR 944 - by Gallegos: Congratulating Frank and Ida Alvarado of Houston.

SR 945 - by Barrientos: Congratulating the Reverend Raphael C. Smith of Austin.

SR 946 - by Whitmire: Congratulating Jason Scott McClellan of Houston.

SR 950 - by West: Honoring Burton F. Raiford.

SR 951 - by Barrientos: Congratulating Richard and Judy Hamner of Austin.

SR 953 - by Truan: Congratulating Emilia and Raul Truan, Sr., of Kingsville.

HCR 239 - (Patterson): Honoring Brigadier General Bertus Leroy Sisco of the Texas State Guard.

MISCELLANEOUS RESOLUTIONS

SR 938 - by Truan: Recognizing the Pan American Golf Association.

HCR 312 - (Bivins): Designating October 15, 1997, and October 21, 1998, as Legislators in Schools Day.

ADJOURNMENT

On motion of Senator Truan, the Senate at 5:22 p.m. adjourned until 10:00 a.m. tomorrow.

APPENDIX

SIGNED BY GOVERNOR

May 29, 1997

SB 220, SB 231, SCR 35, SCR 79, SCR 80, SCR 83, SCR 84, SCR 86

SENT TO SECRETARY OF STATE

May 30, 1997

SJR 17

SENT TO GOVERNOR

May 30, 1997

SB 79, SB 95, SB 135, SB 143, SB 291, SB 310, SB 325, SB 333, SB 455, SB 474, SB 495, SB 502, SB 631, SB 672, SB 882, SB 1137, SB 1354, SB 1514, SB 1566, SB 1568, SB 1596, SB 1624, SB 1814, SB 1929